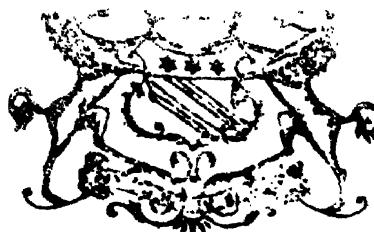


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THE NEW CONSTITUTION OF INDIA

BY
FAQIR CHAND ARORA, M.A.

*Senior Professor of History,
Ram Sukh Dass College, Ferozepore.*



NAWAB SALAR JUNG BAHADUR,

**MALHOTRA BROTHERS
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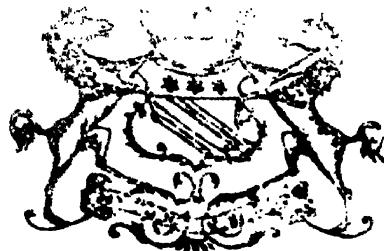
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PREFACE

The Provincial Part of the Government of India Act, 1935, was brought into force on April 1, 1937. It has now been working for over two years, and perhaps satisfactorily. Even a worse critic of this "Unwanted Constitution" admits that the misgivings and forebodings about it have not proved to be true. In other words, in spite of its faults the Constitution has worked beyond the expectations of all. But the constitutional edifice is yet incomplete; the coping stone in the shape of the Federation is yet to be placed. The autonomous self-governing Provinces of India are to be united with the autonomous Indian States in the Federation of India on a date, which is not yet known to anybody. This date will certainly mark a red-letter day in the history of this country.

Whatever opinion may be held about the merit of the Federal Scheme and about the prospects of the establishment of the Federation of India, nobody can shut his eyes to the fact that the Government of India Act, 1935, is working in the Provinces. The stage of uncertainty is over and the working of the Constitution is an accomplished fact. There is, therefore, no sense or meaning in the talk of wrecking the Act—at least the Provincial part of it. As a matter of fact, the Act is designed as a whole and must work as a whole. One cannot work a part and reject a part. There may be changes or amendments, but this does not change the main argument. Thus the country must get ready to work the Federal Scheme. If it is not satisfied with it, it must get it amended. It is certainly not in the interests of India to allow the Responsible Provinces to go on under an Irresponsible Centre. The situation is full of danger because the fissiparous tendencies are gathering strength, and, if allowed further scope, will convert India into a congeries of autonomous Provinces. Thus there is an imperative need for the Federal union, and the sooner it is accomplished the better it is for the true interests of the country.

Under the pressure of war, the work in connection with the preparation for Federation has been suspended for the time being. His Excellency the Viceroy has even declared that after the war is over, the British Government will be willing to consider changes in the Federal Scheme after consulting all the interests in the country. Nevertheless, Federation still remains the objective of His Majesty's Government, and the official Scheme has not been abandoned. As long as there is a chance for the enforcement of the official Federal Scheme, the importance of the Government of India Act, though it may be in an amended form ca

ignored or minimised. Even if it be for the purpose of criticising it or denouncing it, it must receive a careful study by every patriotic Indian. Simply ignoring it will not be of any use, nor will mere decrying it be of any avail. If it is to be changed, amended, or improved, it must be studied and studied well.

In this lies the justification of the publication of this book. The author has aimed at producing a handy, readable and dependable book which should satisfy the needs of a casual reader as well as a student of the Indian Constitution. He has brought to bear on it his extensive knowledge of political theories and constitutional usage, and actual teaching experience of the same for many years. He has not spared any pains to make the book a standard one, and for this purpose the extensive literature on or about the Act, consisting of a number of books by great constitutional Pundits like Professor K. T. Shah, Sir Shafaat Ahmad Khan, Professor G. N. Joshi, Messers Eddy and Lowton, Messers Lahiri and Bannerji, Mr K. V. Ramasubrahmanyam, Mr. K. V. Varadarajan, and Dr. A. B. Keith, reports of the proceedings of the Round Table Conferences, the Joint Parliamentary Committee, and other Committees connected with Indian constitutional reforms, and articles and considered views of leaders of thought in this country appearing from time to time in different journals and newspapers, has been consulted and thankfully quoted at places either in support of or against the opinions advanced by the author himself.

The book describes the main features of the Scheme of All-India Federation and the Provincial Autonomy in a language which is clear, unambiguous and free from all technicalities. Written in the spirit of a student and not a partisan (the author is not connected with any political party and therefore does not hold brief for any), it examines the Scheme in an impartial way, free from rancour, acrimony, or prejudice. While the defects and shortcomings of the Scheme are laid out threadbare, its merits and justification are neither forgotten nor ignored. Thus clarity, simplicity, brevity, and impartiality are the chief features of this book. In the interests of simplicity, the scheme of the book is a little different from that followed in other books. The Prologue contains an historical survey of the constitutional growth in India and describes the events leading to the passing of the Government of India Act, 1935. The first chapter describes the Supreme Authority of the Indian Constitution—the British Crown, which is the source of all power and authority. Then follows the description of the chief features of the Federal Centre, the Federal Executive and the Federal

Legislature. Further to facilitate comparison and contrast, the Provincial Executive and the Provincial Legislatures are taken up. To complete the picture of Provincial administrations, this is followed by the description of the administration of the Excluded and the Partially Excluded Areas, and the Chief Commissioners' Provinces. Then comes the description of the Administrative Relations between the Federation, the Provinces, and the States, the System of Public Finance in Federal India, the Federal Railway Authority, the Federal Judiciary, the Provincial Judiciary, the Services of the Crown in India, the Home Government of India, Miscellaneous Provisions and Constituent Powers, Transitional Provisions, and the Constitutional Status of India. In the next chapter is examined the working of the Provincial Autonomy. The Epilogue deals with the prospects and the need for the establishment of the Federation.

The author knows that the book is rather late; but this delay is perhaps well-compensated by a careful attempt, that is made in it for the first time, to examine the working of the Act in the Provinces. The provisions of the Act are explained in the light of their actual working.

Besides a separate chapter is devoted to the description of the history of office-acceptances, to the examination of the achievement of the Provincial Ministries, and the actual working of and the problems raised by Provincial Autonomy. The Epilogue gives a comprehensive summary of the criticism of the Federal Scheme, examines the merits and demerits of the various alternative schemes, and emphasizes the need for the early inauguration of the Federation. This is perhaps the distinguishing feature and exclusive merit of the book.

How far has the author been successful in his aims, must be left to the reader who may care to take interest in this book. Nobody is more conversant with its defects and shortcomings than the author himself, yet he commends it to the indulgent reader because he feels that it will go a long way to satisfy the curiosity of casual readers, the general needs of the students of constitutional history and administration, and the specific needs of experts—legislators, administrators, and journalists.

In the end, the author must acknowledge his debt of gratitude to all those, whose works he has consulted and whose opinions he has quoted in this book.

FAQIR CHAND ARORA.

FEROZEPOR CITY :

OCTOBER, 1939.

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Give It a Trial

"To draw a strict parallel between the federal portions of the Act and the provincial portions would be misleading. But I would like to express my own profound conviction of the value and the importance of the orderly processes inherent in the federal scheme, and of the seeds of development which that scheme contains. I no more underrate here than in the case of provincial autonomy the sincerity of the doubts which critics of federation may feel. But I would ask them to give federation the trial which I am convinced that it deserves."

[His Excellency the Marquess of Linlithgow, the Crown Representative and Governor-General of India, in a speech at Calcutta on 19th December, 1938.]

A Milestone on the Road to India's Goal

"I have throughout believed that the federal scheme in its operation would have turned out as satisfactory as, broadly speaking, we can all of us regard the scheme of provincial autonomy as having turned out. I will not dilate on that subject to-day, for our work in connection with the federal scheme has been suspended. But in reaffirming, as I do, my belief in the essential soundness of the federal aspects of the Act of 1935. I do so with the greater emphasis because of the evidence, which the federal provisions of the Act constitute, of the anxiety of his Majesty's Government to achieve, with the minimum of delay, and on a basis, which appears to represent the greatest amount of agreement between the various parties and interests affected, the unity of India and to advance beyond a further and a most important milestone on the road to India's goal."

[His Excellency the Viceroy's statement of October 17, 1939.]

PROLOGUE

The Ultimate Destiny of India ; Constitutional Advance ; The Nature of the Indian Government ; The Change ; The Montford Reforms ; Working of the Reforms of 1919 ; The Statutory Commission ; Lord Irwin's Announcement ; the Commission's Report ; the Round Table Conference ; The Gandhi-Irwin Pact ; The Round Table Conference ; The Communal Award ; The Round Table Conference ; The White Paper and the Joint Parliamentary Committee ; The Government of India Act, 1935.

The Ultimate Destiny of India.—The Marquess of Hastings, the Governor-General of India, is believed to have written in his Private Journal on 17th May, 1818, as under :—

"A time not very remote will arrive when England will, on some principles of policy, wish to relinquish the domination which she has gradually and unintentionally assumed over this country, and from which she cannot at present recede. In that hour, it would be her proudest boast and most delightful reflection that she had used her sovereignty towards enlightening her temporary subjects so as to enable the native communities to walk alone in the paths of justice, and to maintain with probity towards their benefactors that commercial intercourse in which we should then find a solid interest."

After the lapse of one-hundred and twenty-one years, to-day, in the year of grace, 1939, it is still a matter of opinion whether the day has come when India should set sail on the sea of the future alone without the support of the country with whom her destinies have been linked for over a century and a half. Yet there is no two opinions on the point that the time has come when India should be allowed the right of self-determination and that she should enjoy autonomous responsible self-government within the British Commonwealth of Nations. India's right to that status has so often been recognized, yet doubts sometimes raise their ugly heads on account of perhaps too cautious and slow moves towards her destined goal. Meanwhile the British Empire has changed complexion and has become a British Commonwealth of Nations. Nevertheless, it is yet a Commonwealth of White Nations. With the grant to India of an effective equal status with other Dominions in the Commonwealth, it will become a

Observations
of the
Marquis of
Hastings'

India's right
to self-
determina-
tion

A Real
Com-
mon-
wealth of
Nations

real Commonwealth of Nations—White and Brown, and a Federation of races and nationalities with equal rights and privileges, linked together for common benefit under the benign shadow of the British Crown. Without this happy consummation the destiny of the British Empire seems to be incomplete.

Constitutional Advance of India.—There is no denying the fact that under the British rule, India has not been standing still from the point of view of constitutional advance. In the beginning the British rulers, partly out of pity and partly on account of their own economic and administrative needs, began to associate the Indians with the work of government, thereby giving them training, perhaps unconsciously, for self-government at some remote time. Meanwhile on account of the spread of Western education and ideas of liberal reform and political liberty, the protege was gaining manhood. It began to demand, in the first instance rather gratefully, and then as a matter of right, more share in its own inheritance. Now it demands its full possession. On the other hand, the self-constituted trustee, in the beginning willingly and later on rather reluctantly and even niggardly, continued to meet this demand. This process represents the constitutional advance of India.

This advance may be described in the words of the Royal Proclamation of December 3, 1909 as follows :—

The Process of Advance

"The Acts of 1773 and 1784 were designed to establish a regular system of administration and justice under the Hon'ble East India Company. The Act of 1833 opened the door for Indians to public offices and employment. The Act of 1858 transferred the administration from the Company to the Crown, and laid the foundation of public life which exists in India to-day. The Act of 1861 sowed the seeds of representative institutions, and the seed was quickened by the Act of 1909. The Act of 1919 entrusted representatives of the people with a definite share in government in the Provinces and pointed the way to full Responsible Government."

Continuation of the Process

The Government of India Act, 1935, continues this advance towards full Responsible Government. It is practically conceded to the fullest possible extent in the Provinces but only partially at the Centre. Yet, it marks a continuation of the process that is to end in the establishment of a full Responsible

Government in the Provinces as well as at the Centre, making Indians complete masters in their own home.

An irresponsible trade oligarchy

The Nature of the Indian Government.—Between 1773 and 1858, the nature of the Government of India was an irresponsible trade oligarchy whose interest in the well-being of the subject people was merely incidental. After 1858, the Government of India became a political despotism, pure and simple. This despotism, however, was a benevolent despotism and was responsible to the British Crown, which in effect meant the King-in-Parliament. Political well-being of the subject people now became a part and parcel of the declared policy of the Government. Between 1858 and 1909, the progress was slow, yet sure and steady. The Reform of 1909 constituted a great step forward. The Resolution on the Reforms of the then Governor-General in Council described their effect as under :

A Benevolent Despotism

"The constitutional changes that have been effected are of no small magnitude. The Councils have been greatly enlarged. The maximum strength of all councils (Central and Provincial) was 126. It is now 370. All classes and interests of major importance will, in future, have their own representatives. In the place of 39 elected members there will now be 135, and while the electorates of the old Council had only the right to recommend the candidates of their choice for appointment by the Head of the Government, an elected member of the new Council will sit as of right and will need no official confirmation. Under the regulations of 1892, officials were everywhere in a majority. The regulations just issued establish a non-official majority in every Provincial Council. Nor has the reform been confined to the constitution of the Councils ; their functions also have been greatly enlarged. A member can now demand that the formal answer to a question shall be supplemented by further information. Discussion will no longer be confined to legislative business and a discursive and ineffectual debate on the budget, but will be allowed in respect of all matters of general public interest. Members will in future, take a real and active part in shaping the financial proposals for the year, and as regards not only financial matters but all questions of administration they will have liberal opportunities of criticism and discussion, and of initiating advice and suggestions in the form of definite resolutions."

The Reforms of 1909

Between 1909 and 1919 intervened the Great World War (1914-1918). India stood loyally and unitedly behind Great Britain. Her soldiers won laurels on the battlefields of France and elsewhere. She neither spared men nor money in that critical

India's
Contribution
to the Great
War.

hour. By this loyal service and help she established her claim to be trusted with further powers to manage her own affairs. The British statesmen were not slow to respond. Mr. Montague, the then Secretary of State for India, made his epoch-making announcement regarding the constitutional goal of India on August 20th, 1917. The announcement ran as under :—

Declaration
of August
20, 1917

" The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of increasing association of Indians in every branch of the administration and the gradual development of self-governing institutions with a view to the progressive realization of responsible government in India as the integral part of the British Empire. They have decided that substantial steps in this direction should be taken as soon as possible and that it is of the highest importance as a preliminary to consider what these steps should be that there shall be a free and informal exchange of opinion between those in authority at home and in India. His Majesty's Government have accordingly decided, with His Majesty's approval, that I should accept the Viceroy's invitation to proceed to India to discuss these matters with the Viceroy and the Government of India, to consider with the Viceroy the views of local Governments, and to receive with him the suggestions of representative bodies and others.

" I would add that progress in this policy can only be achieved by successive stages. The British Government of India, in whom the responsibility lies for the welfare and advancement of Indian peoples must be judges of the time and the measures of each advance, and they must be guided by the co-operation received from those upon whom new opportunities of service will thus be conferred and by the extent to which it is found that confidence can be reposed in their sense of responsibility."

The Impor-
tance of the
Declaration

August 20th, 1917, will always remain a red-letter day in the constitutional history of India. It was the policy enunciated in the Declaration made on that day which put India on the road to *Swaraj*. It still remains the sheet-anchor of the policy of the British Parliament towards India, though it has been interpreted and reinterpreted to suit the needs of the hour and the whims of the Government in power.

The First
step towards
Responsible
Government

The Montford Reforms.—This Declaration was implemented by the grant of the Montford Reforms of 1919, which may be said to be the first real step towards Responsible Government. These Reforms were based on the following four principles :—

(1) There should be, as far as possible, complete popular control in local bodies and the largest possible independence for these of outside control.

(2) The Provinces are the domain in which the earlier steps towards the progressive realization of Responsible Government should be taken. Some measure of responsibility should be given at once and our aim is to give complete responsibility as soon as conditions permit.

The Four Principles on which the Reforms were based

(3) The Government of India must remain wholly responsible to Parliament, but the Indian Legislative Council should be enlarged and made more representative, and its opportunities of influencing Government, increased.

(4) There should be a gradual relaxation of the control of the British Parliament and the Secretary of State over the Government of India and the Provincial Governments.

Under the scheme of the Reforms, the government in India still remained technically unitary, but in actual effect transfer of authority took place to the Governors' Provinces under the "Devolution Rules" and "Relaxation of Control Rules." Subjects were classified as Central and Provincial for the purposes of legislation as well as administration. Separate sources of revenue were also assigned to the Provinces. Dyarchy or a sort of dual government was introduced in the Provinces. The administration of Provincial subjects was divided into the Reserved and the Transferred halves. The former included certain key subjects like land-revenue, finance, law and order, etc., while the latter included nation building departments of education, local self-government, public health, jails, etc. The former half was under the charge of the Governor and his Executive Councillors, while the latter half was under the charge of the Governor and his Ministers. The last-mentioned were to be selected by the Governor from among the elected members of the Provincial Legislature and were responsible to it for the administration of their departments. The Executive Councillors were responsible to the Governor and not to the Legislature.

Transfer of authority to the Provinces

Dyarchy

The membership of the Provincial Legislative Councils was considerably increased. They were to have an increased elected element. The franchise qualifications were lowered so as to widen the electorate. Their powers were also extended so as to give them the powers of voting the Provincial Budgets, controlling the Transferred Departments, and criticising the administration in general. The Councils were to be presided over not by the Governors but by elected Presidents after the first four years after the inauguration of the Reforms.

The Provincial Legislative Councils

Chief Commissioners' Provinces

Certain minor Provinces, the Chief Commissioners' Provinces and the Backward Tracts were kept under the control of the Central Government.

The Central Government

Control and direction of the Government in India was vested with the Governor-General in Council. The number of the Governor-General's Executive Council was to be such as might be thought fit by His Majesty. The Commander-in-Chief was made a permanent member of the Governor-General's Council. The Central Legislature was to be a bicameral legislature, consisting of the Council of State and the Legislative Assembly. The Council of State was to have a membership of not more than sixty, of whom not more than 20 could be officials, and 33 were to be elected. The total strength of the Legislative Assembly was to be 140, of whom 100 were to be elected and 26 were to be officials. After the first four years after the introduction of the Reforms, the Assembly could elect its own President.

The Home Government

The control of the Secretary of State in Council was continued except over the transferred sphere in the Provinces. The total strength of the Council of India was fixed at from eight to twelve. Half of the members must have served or resided in India for at least ten years. The term of office of a member was fixed to be five years. The salary of the Secretary of State for India was to be paid by the British Exchequer while other expenses of the India Office were to be met from Indian revenues. To carry on the agency business of the Government of India, a High Commissioner for India in the United Kingdom was to be appointed by the Government of India, under whose control and pay he was to function.

The High Commissioner for India

Provision was made for the appointment after ten years of a Commission for investigating and reporting on the working of the Reforms and to make recommendations for further advance.

Appointment of a Commissioner

Working of the Reforms of 1919.—This Reform Scheme had a mixed reception in India. The moderate section of political thinkers welcomed it, while the extremists pronounced it as wholly inadequate and completely unsatisfactory. The latter boycotted the newly established Councils and started in 1921 a campaign of non-violent non-co-operation under the leadership of Mahatma Gandhi. To the issue of reforms was joined the issue of Khilafat

regarding which the Muslim mind was agitated at the time. In the absence of the left-wingers, the Moderates captured the Councils and worked the Reforms. Even they were not satisfied with the Reforms and in September, 1921, demanded through a resolution an early revision of the Montford Reforms.

Demand for revision

Meanwhile the Non-Co-operation Movement was called off. A section of the Congressmen, called the "Swarajists," decided to fight the elections and to capture the Councils with a view to act on a policy of uniform, continuous and sustained obstruction. Under the distinguished leadership of Mr. C. R. Dass and Pandit Moti Lal Nehru, they scored triumphs in certain Provinces and became very conspicuous in the Central Legislature. In the Central Provinces and Bombay, they wrecked the Reforms, while at the Centre, they put a considerable pressure. At the instance of Pandit Moti Lal Nehru, the Legislative Assembly passed a resolution urging the Government to convene a Round Table Conference of British and Indian statesmen to formulate a scheme of full Responsible Government for India. The Government was opposed to the changing of the Act, but agreed to appoint a Committee to enquire into the working of the Reforms and to suggest changes within the framework of the Act. The majority of the Muddiman Committee reported that the Constitution was working well and required a longer period of trial before requiring changes. It suggested certain changes of a technical nature. The minority, on the other hand, declared the dyarchy to be unworkable on account of its inherent defects and suggested the remodelling of the whole scheme. In September, 1925, a Swarajist amendment urging fundamental changes in the Constitution of India and demanding the holding of a Round Table Conference was carried in the Assembly against the opposition of the Government. Political agitation, indicating dissatisfaction with the Montford Reforms, continued in the country.

The Entry of the 'Swarajists'

Demand for a Round Table Conference

The Muddiman Committee's Report

The Swarajist Amendment

The Statutory Commission.—The British Government was now persuaded to appoint a Statutory Commission to go into the question of Indian reforms. On 8th November, 1927, two years before the due time, Lord Irwin, the Governor-General of India, announced the appointment by Parliament of the Indian Statutory Commission. It was to enquire into

The Simon Commission's terms of reference

"the working of the system of government, the growth of education, and the development of representative institutions in British India, and matters connected therewith, to report as to whether and to what extent it is desirable to establish the principle of responsible government or to extend, modify, or restrict the degree of responsible government then existing therein, including the question whether the establishment of second chamber of the local legislatures is or is not desirable."

Later on the Commission was also empowered to examine the adjustment of relationship between the Indian States and the British Indian Provinces.

The Commission was to function under the presidency of Sir John Simon and had an all-white membership. The exclusion of any Indian from the membership of the Commission excited widespread resentment in India. The moderate and the extremist elements were united against the Commission and boycotted it. This resentment did not disappear even when Sir John Simon proposed to consult the Central and the Provincial Committees. The Legislative Assembly passed a resolution boycotting the Simon enquiry.

Lord Irwin's Announcement.—It was under these circumstances that Lord Irwin made an important announcement on behalf of His Majesty's Government on October 31, 1929. It was declared that in the judgment of His Majesty's Government, it was implicit in the Declaration of 1917 that the natural issue of India's constitutional progress as there contemplated was the attainment of Dominion Status, and that after the report of the Statutory Commission was published, Indian political leaders would be invited to hold consultation with British statesmen at a Round Table Conference in London. This satisfied the Liberals who welcomed the idea of a Round Table Conference, but left the Congress politicians cold because their demand for an assurance that at the Conference will be framed a Constitution granting Dominion Status to India was refused. At the annual session of the Indian National Congress at Lahore in December, 1929, a resolution was passed boycotting the forthcoming Round Table Conference and empowering Mahatma Gandhi to start a campaign of direct action. This was done in March, 1930.

Throughout the year the country remained in the grip of the Civil Disobedience Movement. Mahatma Gandhi and all other important leaders, along with thousands of their followers were put behind the prison-bars.

The Goal of Dominion Status

The Round Table Conference

The Congress attitude

The Civil Disobedience Movement

The Commission's Report.—The report of the Simon Commission was issued in June, 1930, but was received with indifference. The Commission was not called upon to deal with the Federation of British India and Indian India as an immediate issue and therefore recommended it as a distant ideal. It recommended a scheme of Provincial Autonomy without any great advance at the Centre. This did not satisfy public opinion in the country. On July 9th, 1930, His Excellency the Viceroy declared *inter alia* before the members of the Legislature :

" The Conference will thus enjoy the unfettered right of examining the whole problem in all its bearings, with the knowledge that its labours are of no academic kind, and His Majesty's Government still hope that Indians of all schools of thought, whatever the attitude that some have hitherto taken, will be ready to share in this constructive work."

The Round Table Conference.—The Round Table Conference was inaugurated by His Late Majesty King George V on the 12th of November, 1930. It held its sittings under the presidency of late Mr. Ramsay Macdonald, the Labour Prime Minister. At the very first sitting the Princes expressed their readiness to join a Federation of British India and the Indian States. This changed the scope of the Conference, which now set about to frame a Federal Constitution for India. The Conference divided itself in various Committees and Sub-Committees like the Federal Structure Sub-Committee, the Minorities' Sub-Committee, the Provincial Constitution Sub-Committee, the Burma Sub-Committee, the Services Sub-Committee, and the Franchise Sub-Committee. The Conference adjourned on January 19th, 1931, with a view to exploring avenues for a communal settlement and to sound public opinion on the decision of the Conference. The Prime Minister made an important speech on the closing day, in which he envisaged a Federal Government for India with responsibility for government on the Central and the Provincial Legislatures with certain necessary safeguards.

The Gandhi-Irwin Pact.—This had a good reception in India. On their return from England, some of the prominent Round Tablers tried to impress upon the Congress leaders the desirability of trusting British statesmen and participating in further consultation. Mahatma Gandhi and the Viceroy, Lord Irwin, were brought together and negotiated the Gandhi-Irwin Pact in March, 1931. This resulted in the calling off of the Civil Disobedience Movement and the release of political prisoners. The Congress also agreed to be

Recommendations

The first Session

The Prime Minister's Speech

represented at the second session of the Round Table Conference. This Pact was ratified by the annual session of the Indian National Congress at Karachi on 31st December, 1931.

The Round Table Conference.—The Round Table Conference met for the second time in London on 7th September, 1931. Gandhiji attended it as the sole representative of the Congress. Meanwhile the Labour Government resigned and after the General Elections, the National Government, with strong conservative backing, took office. The Labour Secretary of State for India gave place to Sir Samuel Hoare, the Conservative Secretary of State for India. The work of the Conference was taken up from where it had been left before, but the Indian representatives failed to arrive at an agreed solution of the Communal Problem. The Prime Minister then declared that the British Government might be compelled to apply a provisional scheme embodying the decision of His Majesty's Government on the Communal Problem. A number of Committees—the Franchise (Lothian) Committee, the Federal Finance (Percy) Committee, the States Enquiry (Davidson) Committee (financial) were set up to enquire into specific problems. A Consultative Committee—a sort of a general Sub-Committee of the Conference—was also set up to function in India. Even this Committee failed to find out a solution of the Communal Problem.

The Communal Award.—Meanwhile the Civil Disobedience Movement was revived on the return of Mahatma Gandhi from London in the beginning of 1932. All the great leaders of the Congress were again arrested by Lord Willingdon's Government. On 16th August, 1932, was announced the Premier's Communal Award, which provided separate communal electorates for Muslims, Sikhs, Indian Christians, Anglo-Indians, Europeans, Women, and the Depressed Classes. Mahatma Gandhi protested against the provision of separate electorates for the Depressed Classes as it meant disrupting the Hindu Community. When it was unheeded, he declared his intention of fasting unto death, if this provision was not changed. This resulted in hurried negotiations, which brought about the Poona Pact, which gave practically double the number of seats to the Depressed Classes but kept them in the fold of the Hindu community. This Pact was accepted by the British Government.

The Second Session

The Communal Problem

The Sub-Committees

Mahatma Gandhi's Fast

The Poona Pact

The Round Table Conference.—In September, 1932, Lord Willingdon, the Viceroy of India, declared on behalf of His Majesty's Government that it was proposed to introduce constitutional reforms on the basis of an All-India Federation with the widest practicable measure of Responsible Government both at the Centre and in the Provinces. The third session of the Round Table Conference met with a smaller representation on 17th November, 1932, and broke up on 24th December, 1932. It considered the reports of the various committees and certain other important matters.

The Third Session

The White Paper and the Joint Parliamentary Committee.—His Majesty's Government published its proposals for constitutional reforms for India in a Parliamentary White Paper*, published in March, 1933. A Joint Parliamentary Committee under the Presidency of the Marquess of Linlithgow was appointed in April, 1933, to examine and to report on the White Paper proposals. The Committee was helped by Indian assessors. After hearing lengthy evidence and examining voluminous material, the Committee submitted its report to Parliament on November 22, 1934. The report was adopted by both Houses of Parliament.

The J. P. C. Report

The Government of India Act, 1935.—The Government of India Bill, 1935, which was based on the recommendations of the Joint Parliamentary Committee, was read a first time in the Parliament on 5th February, 1935. The motion for the Third Reading was made on 4th June, 1935. It was placed before the Lords on 6th June, 1935, and was passed with certain amendments on 24th July, 1935. It again came before the Commons who accepted most of the amendments moved in the Lords. The Lords also agreed to certain amendments by the Commons to their amendments. The Bill at last received the royal assent on August 2, 1935, and became the Government of India Act, 1935.

Different Stages

It is perhaps the longest Act in the history of Parliament. The original Act consisted of 478 clauses and 16 Schedules. By the Government of India (Reprinting) Act, passed on 20th December, 1935, it has been divided in the Government of India Act, 1935, and the Government of Burma Act, 1935. The former contains 321 Sections and 10 Schedules. A short Amending Act has recently been passed by the Parliament.

The Longest Act

The Amending Act

* Command Paper 4268.

The Preamble to the Government of India Act, 1919*

"Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian Administration, and for the gradual development of Self-Governing institutions, with a view to the progressive realization of responsible government in British India as an integral part of the empire :

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken :

And whereas the time and manner of each advance can be determined only by Parliament upon whom responsibility lies for the welfare and advancement of the Indian peoples :

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility :

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities :

Be it therefore enacted by the King's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, by the authority of the same, as follows.

*This Preamble stands with the Government of India Act, 1935.

NEW CONSTITUTION OF INDIA

The New Constitution of India

CHAPTER I

THE SUPREME AUTHORITY : THE CROWN IN RELATION TO INDIA

The Act and the Preamble ; The Supreme Authority ;

Powers of the Crown ; British India ; Indian States.

The Act and the Preamble.—Constitutional changes in the Government of India have been brought about by the enforcement on 1st April, 1937 of a part of the Government of India Act, 1935. Unlike other Acts, this Act has no Preamble to it, explaining the objects and aims of passing it. According to the British Attorney General, "Much anxious consideration was given to the drafting of this Bill, and it naturally occurred both to the Government and to private Members and to other persons interested in the Bill to consider whether it would not be desirable, as the Government of India Act, 1919, had a Preamble, to have a Preamble to this Bill. That question was decided in the negative and the Bill was introduced without a Preamble."* It is needless to go into the reasons that led the authorities to take the decision that they did, but there is no gainsaying the fact that it caused bitter disappointment to that section of the people in India, which desired that the seal of Parliamentary approval should be affixed in unequivocal terms to 'Dominion Status', as the declared goal of Indian constitutional evolution. Nevertheless in order to avoid the impression that the British Government had gone back on the statutory declaration made in the Government of India Act, 1919, regarding the constitutional goal of India, the British Government decided and the Parliament agreed, that the Preamble of the Government of India Act, 1919, should not be repealed along with that Act itself. Thus the Preamble to that Act stands and should be studied along with this Act.

No
declaration
of Dominion
Status as
the
final goal.

The
Preamble to
the Act of
1919 stands

*Parliamentary Debates.

Prerogative Powers.

of oversea territories save in so far as they are regulated by the Act."* The Crown's prerogative rights regarding British India include the right to control foreign affairs, including the right to cede territory, making war and peace, the annexation of territory, exemption from civil and criminal liability for itself and its property (though law suits can be brought against the Federation or the Provincial Governments), grants of honours of imperial status, the settling of the order of precedence, the right of granting pardons, reprieves, respites or remissions of punishment, the supreme ownership of all land, enjoyment of escheats of land, treasure-troves and the property of persons dying intestate without kin, and ownership of mines, etc.

Statutory Powers.

The powers of the second kind include multifarious powers as provided for under the Act. They relate to the appointment of the Governor-General of India and the Governors of the autonomous British Indian Provinces, the acceptance of the accession of the Indian States to the Federation, the issuing of the Instrument of Instructions to the Governor-General and the Governors, the appointment of the Commander-in-Chief, the control of His Majesty as to defence appointments, the constitution of the Federal Court and the High Courts, the use of His Majesty's forces in connection with the discharge of functions of the Crown in its relations with the States, the expenses of the Crown in connection with the Indian States, the audit of accounts relating to the discharge of the functions of the Crown in relation to Indian States, the contracts in connection with the functions of the Crown in relation to Indian States, the right of receiving contributions and payments from the Indian States, the power granting commissions in any naval, military or air force raised in India, the right of issuing Orders in Council as specified in the Act, the power of declaring Excluded and partially Excluded Areas by Orders in Council, the power of disallowing Federal and Provincial Acts, the power of proclaiming the establishment of the Federation, and many other powers as provided for at various places in the Act.

*Sec. 179.

†Keith : Constitutional History of India, page 324.

(ii) **The Indian States.**—The relationship between the Crown and the Indian States is by no means so simple. The Indian States occupy a peculiar position in the British Empire. They stand on an entirely different footing regarding both status and character as compared with the British Indian Provinces. They form part of the Indian Empire but they are not British territory and their subjects are not British subjects. They are not subject to the legislative authority of the British Parliament or to the judicial power of the Privy Council. Yet they are not in practice really sovereign because they have admittedly lost control of their external affairs, and are not known to international law. They are, however, subject to the rights of the Paramount Power. The Indian Princes claim that this Paramount Power is the Crown and not the Government of India and that they are tied to the Crown by their treaties. The Butler Committee accepted "that the relationship of the States to the Paramount Power is a relationship to the Crown, that the treaties made with them are treaties made with the Crown, and that those treaties are of continuing and binding force as between the States which made them and the Crown." The same Committee, however, felt it difficult to give a precise definition of Paramountcy. "Paramountcy must remain paramount; it must fulfil its obligations defining or adapting to the shifting necessities of the time and progressive development of the States." The relationship between the Paramount Power and the States "is a living, growing relationship shaped by circumstances and policy, which is a mixture of history, theory and modern fact." In 1926 Lord Reading in a letter to His Exalted Highness the Nizam summed up the position as under:—

"The sovereignty of the British Crown is supreme in India, and, therefore, no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only on treaties and engagements but exists independently of them, and quite apart from its prerogative power it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India." Thus the British Government has certain rights regarding Indian States which go under the name of *Paramountcy*. These are at present exercised on behalf of the Crown by the Governor-General in

Position of
the Indian
States.

Paramountcy

The
sovereignty
of the
British
Crown

Resumption
of rights by
the Crown

Council under the general control of the Secretary of State. The Joint Parliamentary Committee felt it necessary to resume them in their entirety into the hands of the Crown. But there is obvious difference between the resumption of authority in the case of British India and that of the Indian States, because while in the case of the former that power can be entirely redistributed or assigned without any hitch, in the case of the latter it cannot be done in view of the internal sovereignty of the Indian States. This fact has greatly influenced the character and composition of the Indian Federation and will be discussed hereafter. No ruler of an Indian State can be compelled against his will to join the Indian Federation which cannot exercise any authority over the State without the consent of the Ruler. Provision has, therefore, been made in the Act for the *voluntary* joining of the Federation by the princes by means of the Instruments of Accession in which a declaration will be made by them individually that they accede to the Federation as established under the Act.* In such an Instrument the Indian Prince shall specify the matters with respects to which the Federal Legislature may make laws for his State. It will not be open to him to reduce the number of these subjects later on. His Majesty, however, can refuse to accept any Instrument of Accession if he thinks that it is inconsistent with the federal scheme under the Act.†

States not acceding to the Federation and subjects not ceded to the Federation

Regarding those States which may not enter the Federation and regarding those subjects which may not be ceded to the control of the Federation, the Crown's position will be the same as before the passing of the Act. To discharge these functions it can appoint its Representative separate from the Governor-General though it will be lawful for it to appoint the same person to both the offices. It is provided that any powers connected with the exercise of the functions of the Crown in its relations with the States shall, in India, if not exercised by His Majesty, be exercised only by, or by persons acting under the authority of, His Majesty's Representative for the exercise of such functions of the Crown.‡

To sum up it may be stated that as far as British India is concerned all authority, rights, and jurisdiction have been resumed by the Crown and then

*Sec. 6 (1). †Sec. 6 (4). ‡Sec. 2 (1).

a redistribution of the authority has been made between the autonomous Provinces and the Federation. Regarding Indian States the powers and functions of the Crown have also been resumed by it so as to make the establishment of the Federation possible. The latter will come into being as far as the States are concerned only by the willing act of their Rulers, and its authority will extend only over the sphere willingly ceded by them and agreed to by the Crown. The powers of the Crown in relation to the affairs of India are to be exercised through the Secretary of State for India who is a member of the British Cabinet and is responsible to Parliament.

Crown to
act
through the
Secretary
State for
India

CHAPTER II

ALL-INDIA FEDERATION.

The Federation of India ; the Development of the Federal Idea ; Federation of British India and the Indian States ; Realization of the Ideal ; the Units of the Federation ; the All-India Federation ; Some Anomalies of the Indian Federation.

The Federation of India. The Government of India Act, 1935, envisages the organisation of the Indian government on a federal basis. The new government is to include British India and those Indian States which may be willing to join it. The conditions under which and the method how the Federation of India is to come into being is laid down in the Act* as follows :—

How
Federation
will come
into being

1. “It shall be lawful for His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the condition hereinafter mentioned is satisfied, to declare by proclamation that as from the day therein appointed there shall be united in a Federation under the Crown, by the name of the Federation of India,—

(a) the provinces hereinafter called Governors’ Provinces, and

(b) the Indian States which have acceded or may thereafter accede to the Federation ; and in the Federation so established there shall be included the Provinces hereinafter called Chief Commissioners’ Provinces.

2. The condition referred to is that States—

Conditions
to be
satisfied

(a) the Rulers whereof will, in accordance with the provisions contained in Part II of the First Schedule to this Act, be entitled to choose not less than fifty-two members of the Council of State ; and

(b) the aggregate population whereof, as ascertained in accordance with the said provisions amounts to at least one-half of the total population of the States as so ascertained, have acceded to the Federation.”

*Sec. 5.

The Development of the Federal Idea.—It is very interesting to trace the growth of the idea of a Federation for India. Before the enforcement of the Act of 1935, in the words of the Joint Parliamentary Committee Report, " notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice, and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India."* As a matter of fact it is one of the most important achievements of the British in India that that great land is politically unified under the aegis of one all-pervading government and the various parts of India are linked with one another so that for once India emerges as one indivisible whole. But this process went too far so that the Government of India became highly centralized and left little scope of independent action to the provinces. The provincial governments did not enjoy any authority on their own account but by devolution or delegation from the centre. To a great extent they became merely the agents of the Central Government. This is obviously not suited to the great subcontinent of India which is a land of diversities—ethnological, cultural, religious, communal, linguistic, and geographical. To allow full scope to the safeguarding and development of various interests and geographical areas while keeping them parts of one whole, the idea of Federation came to be mooted.

Indeed India is not altogether strange to the idea of a practical federation. Throughout her history India has presented a spectacle of unity in diversity. Both centrifugal and centripetal forces have been at work. When under the influence of the former, India became a congeries of sovereign states, there was no political union and hence there was no idea of federation. But when under the influence of centripetal forces represented by a Chandragupta, an Asoka, a Samudragupta, an Harsha, an Alaud-Din, or an Akbar, India was unified, there was a political union under the aegis of an Empire. The organization of these Empires was superficially on a unitary basis represented by the authority of the Emperor, but in actual practice it worked on federal lines because under the very nature of things considerable autonomy had to be allowed to provincial governments under provincial viceroys and the composite states which never completely lost their identity. It was a political convention with Indian rulers in the past that generally speaking after a conquest, they were content with a formal recognition of their supremacy in recognised ways by a conquered state and then allowed it to carry on in its old way subject to the authority of the Central Government which was rarely exercised in actual practice. Thus federalism in its practical aspects was not unknown to India in the past.

The British, however, from the very beginning aimed at complete centralisation. Before 1773 the Presidencies of Calcutta, Bombay, and Madras were almost independent of each other. The Regulating Act of 1773 for the first time tried to introduce unity of control by subordinating in certain matters the Presidencies of Bombay and Madras to the control of the Presidency of Fort William. Pitt's India Act of 1783 made the position clearer. The process went on till by the Act of 1833 the legislative and administrative centraliza-

Overcentralization

Federalism
in India in
the past

Centraliza-
tion

* Joint Parliamentary Report, page 3, para 5

tion was complete. It received added strength from the development of rapid means of communication in the fifties. Thus by the Mutiny the system of government in India was highly centralised and the Government of India exercised complete control over the Provincial Governments.

Decentralization

The conditions created by the Mutiny started the reverse process. "The defects of the system—the extravagance that it entailed, the lack of any connection between Provincial needs and the distribution of funds among the Provinces, the indifference and apathy of the Provincial Governments in the growth of revenue collected through their agency—all pointed the way to some sort of decentralization in finances and administration in the interests of efficiency." The process of financial decentralization was initiated by Lord Mayo in 1870. It was continued till the system of 'Provincial financial settlements' was made permanent by Lord Hardinge.

The idea of Provincial Autonomy

Yet there was no idea of federation because the Provinces were merely subordinate administrative divisions with no statutory demarcation of legislative, administrative and financial spheres. The Announcement of August 20, 1917, and the decision of the authors of the Joint Report to make a beginning towards responsible self-government for India in the Provinces necessitated a change in the centralised system of Indian Government. This led to the idea of Provincial Autonomy which in its turn led to the idea of Indian Federation.

The growth of the idea of Federalism

This gradually came to be regarded as an ultimate goal of British policy in India. The authors of the Montagu-Chelmsford Report declared : "Our conception of the eventual future of India is a sisterhood of States, self-governing in all matters of purely local or provincial interest." The idea was strongly recommended by the Simon Commission which wrote, "Apart altogether from any question of an ultimate federal union between the Indian States and British India, there are, we think, very strong reasons for the reconstruction of the Indian constitution on a federal basis." It went on to argue that "if self-government is to be a reality, it must be applied to political units of a suitable size, after taking into account all relevant considerations," and "that it is only in a federal structure that sufficient elasticity can be obtained for the union of elements of diverse internal constitution and of communities at very different stages of development and culture."

Arguments in favour of a Federation for India

Besides, there are other arguments in favour of a Federation for India. It provides a working solution of the Hindu-Muslim problem in its all-India aspect because it 'satisfies the ambition of the Muslims to rule over the Hindus in certain Provinces' and 'provides a safeguard of Muslim interests in other Provinces'. Looked at from this point of view Indian Federation becomes a Federation of Communities. The idea certainly appeals to the leaders of the Muslim Minority in India. The late Sir Muhammad Shafi stated in the meeting of the Minorities Committee at the First Round Table Conference : "To my mind the Federal India of the future with the Central Government in the hands of the majority community, and the Provincial Governments in six out of the eight Governors' Provinces in the hands of the same community, the four Provinces in which the Majority Community will be in a minority and the Minority Community will be in a majority will in itself constitute a guarantee of good treatment by both the communities. To me this one picture as regards the future is the most fascinating and the most attractive, for to my mind this is the real solution, the permanent solution of the Hindu-Muhammadan problem in India." The late

Maulana Muhammad Ali also spoke in the same strain at the First Round Table Conference : "Luckily, however, there are Mussalman majorities in certain provinces, and with the federal form of Government, which is suited to India not only for Hindu-Moslem reasons but for the sake of the Princes, this is in our favour." Again the two sentiments of national unity and cultural autonomy which is sometimes accompanied with a demand for the reorganisation of provinces on linguistic or cultural basis can only be reconciled through federalism. Lastly in the words of the Joint Parliamentary Report, "Provincial Autonomy is, in fact, an inconceivable policy unless it is accompanied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together. In other words, the necessary consequence of Provincial Autonomy in British India is a British India Federal Assembly. Thus various problems of the present-day India can be solved through the establishment of the Indian Federation."

A solution of Hindu-Moslem Problem

Reconciliation of national unity and cultural autonomy

Necessary consequence of Provincial Autonomy

India one and indivisible

Connection with the Crown

Common economic problems
Defence and social matters

J. P. C.'s view.

Federation of British India and the Indian States. But British India does not stand alone. Side by side with it exists Indian India, comprising nearly six hundred states with slightly less than half the area and one-fourth of the population of India. Thus All India is more than British India. "India is one and indivisible. Nature has not divided her into British India and Indian States. These political divisions are purely arbitrary. There are no natural barriers separating the two." In the words of the Simon Commission "it is frequently an accident of history whether a particular district has been brought directly under British rule or left in the hands of an Indian ruler. There is little or nothing to tell the traveller as he passes by train from one to the other that he has crossed the boundary. Whatever may be the differences of climate and physical feature, and whatever may be the diversities of race and religion in India, it is not these differences that are reflected in the purely arbitrary division between British and State territory. There is an essential unity in diversity in the Indian peninsula regarded as a whole."* Again both the British India and the Indian States are united to the British Crown through the Government of India. Further "economic forces are such that the States and British India must stand or fall together....The increasing importance of industry brings problems that must be faced by both together. In such vital matters as communications (rail, road or postal), customs, monetary policy and labour regulation, co-operation is becoming essential." † Apart from purely economic matters, co-operation is absolutely essential in questions relating to defence and social matters.

The Joint Parliamentary Committee also realized this. They stated "that unity of India on which we have laid so much stress is dangerously imperfect so long as the Indian States have no constitutional relationship with British India."‡ In the next para they continued : "The existing arrangements under which economic policies, vitally affecting the interests of India as a whole, have to be formulated and carried out are being daily put to an ever-increasing strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal custom duties—an impossible alternative,.....Worse than this, India may be said even to lack a general customs system

* Simon Commission's Report, Vol. II, para. 15.

† *Ibid*, para 17.

‡ Vol. I, para 30.

|| para 31.

uniformly applied throughout the sub-continent. On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct the flow of trade.....On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British India Legislature in which no Indian State has a voice,.....Moreover a common company law for India, a common banking law, a common body of legislation on copy-right and trade-marks, a common system of communications, are alike impossible On all these points the Federation now contemplated would have power to adopt a common policy....."

Advantages to His Majesty's Government

Thus an All-India Federation has solid advantages from the point of view alike of His Majesty's Government, of British India, and of the Indian States. It is so for His Majesty's Government because the States' *bloc* will apply a brake to any undesirable measure of British Indian statesmen and will give steadfast support to a strong and stable Central Government. The States, conservative and backward as they are, can be used for retarding the too hasty progress of British India towards economic and political nationalism. They can also be used, if need be, to put an obstacle in the way of an early demand for the transfer to responsible Indian ministers of complete control over the Central Government including the departments of defence and external affairs. Thus the entry of the States in the Federation provides an effective safeguard against British India ever thinking of complete independence or pursuing a reckless career of political advance.

Advantages to British India and Indian States

To British India, an All-India Federation offers solid economic and political advantages and particularly it affords possible opportunity for her people to realize their grand dream of a united India. The Indian States also gain by joining the Federation. In the first instance it provides them an opportunity to bridle democracy in British India and thus to safeguard their autocracy because it is thought that 'Democracy and Autocracy, if brought together, have equal chances of diluting each other.' It means financial gain to them—"either on account of the abolition of their tributes or the payment of compensations to them in lieu of ceded territories." Again by entering the Federation, "they are agreeing to transfer that part of the Paramountcy which has reference to matters of common interest to the whole country and over which they have hitherto no control, and such other portions of their power of a like nature 'which were most liable to risk from erosion' to an agency in which they will have an effective voice."*

Montford Report's view

Realization of the Ideal.—Thus self-interest of the parties made the realization of an All-India Federation a common, though distant, ideal. The Montford Report stated : "Granted the Announcement of August 20th, we cannot at the present time envisage its complete fulfilment in any form other than that of a congeries of self-governing Indian provinces associated for certain purposes under a responsible government of India ; with possibly what are now the Native States of India finally embodied in the same whole, in some relation which we will not now attempt to define."† A similar ideal also appealed to some of the Indian Princes. On 19th December, 1929, His Highness the Maharaja of Bikaner declared to the Legislative Assembly of his State : "I look forward to the day

* Punniah, K. V. : *India as a Federation*, page 57.
† para. 120.

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when a United India will be enjoying Dominion Status under the aegis of the King-Emperor and the princes and States will be in the fullest enjoyment of what is their due—as a solid federal body in a position of absolute equality with the federal provinces of British India." The Simon Commission also looked forward to the ultimate establishment of a Federation of Indian States and British Indian Provinces, but it did not anticipate that the States would be willing to join such an All-India Federation in the near future. This distant ideal of an All-India Federation became a practical proposition at the first session of the Round Table Conference. Sir Tej Bahadur Sapru appealed to the patriotism of the Princes in these words: "I ask them to say whether at any time in history India was so arbitrarily divided as it is now geographically, British India or Indian India. I say we are one India.I, therefore, ask them to come forth on this occasion and say whether they are prepared to join an All-India Federation." The reply to this appeal was patriotic enough. H. H. the Maharaja of Bikaner declared: "We of the Indian States are willing to take our part in and to make our contribution to the greater prosperity and contentment of India as a whole. I am convinced that we can best make that contribution through a federal system of government, composed of the States and British India." The idea received support from all quarters and the Conference proceeded to discuss a scheme for an All-India Federation which was incorporated in the Government of India Act, 1935.

The
Maharaja of
Bikaner's
declaration

Simon Com-
mission's
opinion

At the R. T.
Conference

The Units of the Federation. The Federation of India will be made up of (a) the Governors' Provinces, (b) the Chief Commissioners' Provinces, and (c) the Indian States which may accede to the Federation.* Under the Act the following constitute the Governors' Provinces:—(1) Madras, (2) Bombay, (3) Bengal, (4) the United Provinces, (5) the Punjab, (6) Bihar, (7) the Central Provinces and Berar, (8) Assam, (9) the North-West Frontier Province, (10) Orissa, (11) Sind, and "such other Governors' Provinces as may be created under this Act."† This can be done by an Order in Council after consultation of the Federal Executive and Legislature and the authorities of the Provinces affected.‡ The boundaries of a Province can also be altered in the same way. Burma has ceased to be a part of India since April 1st, 1937.§ Berar, though continuing under the sovereignty of His Exalted Highness the Nizam, is deemed to be a part of Governor's Province, called the Central Provinces and Berar, and Berari subjects of His Exalted Highness, except for the purposes of any oath of allegiance, now rank as subjects of His Majesty.|| If, however, such an agreement with the Nizam for the administration of Berar ceases to have effect, His Majesty in Council may make such consequential modifications in the

The
Governors'
Provinces

Separation of
Burma

Berar

*Sec. 5, (1) (a) and (b).
§Sec. 46 (b).

†Sec. 46 (1)
||Sec. 47.

‡Sec. 290.

provisions of this Act relating to the Central Provinces as he thinks proper.

Chief Commissioners' Provinces

The following are recognized to be the Chief Commissioners' Provinces:—British Baluchistan, Delhi, Ajmere-Merwara, Coorg, and the Andamans and Nicobar Islands, the area known as Panth Piploda, and "such other Chief Commissioners' Provinces as may be created under this Act."* Aden has ceased to be a part of India † It is provided in the Act‡ that on such date as His Majesty may by Order in Council appoint, Aden shall cease to be part of British India. His Majesty in Council is empowered to make proper arrangements|| for the government of Aden after the separation. Provision is made for conferring the power of hearing appeals from courts of Aden to some court in India against whose decisions appeal may be brought to His Majesty in Council.

Indian States

The other unit of the Federation will be constituted by the Indian States which may join the Federation.§ A special procedure has been laid down for the entry of the Indian States. It is laid down in the Act|| that a State shall be deemed to have acceded to the Federation if His Majesty has signified his acceptance of an Instrument of Accession executed by the Ruler thereof, whereby the Ruler for himself, his heirs and successors declares that he accedes to the Federation as established under this Act with the intent that the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal authority established for the purposes of the Federation shall, by virtue of his Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to his State, such functions as may be vested in them by or under this Act. The Ruler also assumes the obligation of ensuring that due effect is given within his State to the provisions of this Act so far as they are applicable therein by virtue of his Instrument of Accession. The Instrument of Accession, however, may be executed conditionally on the establishment of the Federation on or before a specified date, and in that case the State shall not be deemed to have acceded to the Federation if the Federation is not established by that date.

*Sec. 94 (1).
||Sec. 288 (2).

†Sec. 24 (a).
¶Sec. 6.

‡Sec. 288 (1).

§Sec. 5 (b).

Thus it is clear that entry of the Provinces—the Governors' as well as the Chief Commissioners'—in the Federation is *automatic* while the entry of the States is *voluntary*. It should, however, be noted that the Federation cannot come into being unless the Rulers of Indian States entitled to choose not less than fifty-two members of the Council of State (in accordance with the provisions contained in Part II of the First Schedule to the Act) and the States with their aggregate population amounting to at least one-half of the total population of all the Indian States agree to join the Federation.*

The All-India Federation. Thus the Federation of India will comprise the British India—the Governors' Provinces, and the Chief Commissioners' Provinces—and the Indian States that may like to join the Federation. The Federation shall be brought into being by a Proclamation by His Majesty, if an address in that behalf has been presented to him by each House of Parliament and if the States entitled to choose not less than fifty-two members of the Council of State and population whereof is at least one-half of the total population of the States have signified their intention to join the proposed Federation.† The executive head of the Federation will be the Governor-General who will be appointed by the Crown. The sphere of work of the Federal Government will be divided in two sections—reserved to the personal control of the Governor-General and to be managed through Counsellors responsible to him, and transferred to the control of a Council of Ministers responsible to the Legislature. The Legislature shall consist of two Houses—The Council of State and the Federal Assembly. There shall also be a Federal Court.

Some Anomalies of the Indian Federation.—It is not proposed to give here a detailed criticism of the scheme of the Indian Federation. It should suffice to bring out some special features of the new federal constitution. In the first instance it will be useful to take some authoritative definition of *federation* and to determine its special features, and then to examine the Indian federal scheme in the light of that. According to Professor Newton, a federal state is

"a perpetual union of several foreign states, based first upon a treaty between those states, or upon some historical status common to them all, and secondly, upon a federal constitution accepted by

Units of the Federation

Proclamation by His Majesty

The Governor-General

Dyarchy

The Council of State and the Federal Assembly

The Federal Court

Federalism defined

their citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the external and internal sovereignty of the states is impaired and the federal union in most cases alone enters into international relations." According to Professor Garner, "Where several states unite themselves together under a common sovereignty and establish a common central government for the administration of certain affairs of general concern or where a number of provinces or dependencies are similarly united by their common superior, the component members still retaining a large local autonomy, but surrendering the management of the whole or nearly the whole of their external affairs to the central government, we have a federal union, or, as is often said, a federal state."

Chief
features of a
Constitution

The distinguishing features of a federal constitution are (i) the existence of a number of states or political communities 'possessing of right their own constitutions and forms of government' and possessing the liberty of independent action in a more or less extensive sphere. (ii) a common constitution and government for the direct administration of certain general concerns. (iii) the division of powers and responsibility between the central authority and the component units : (iv) and the existence of an independent and impartial judiciary for the settlement of disputes between the units or between the units and the centre.

Indian
Constitution
truly federal

Examined in the light of the above, it will be noticed that the scheme propounded in the Government of India Act, 1935, is truly *federal*, though it has certain imperfections, weaknesses, and anomalies. The last mentioned are due to the special circumstances and needs of India as will be made clear hereafter. India is going to have a rigid and written constitution where amendment is definitely and narrowly restricted. Again there is a well-defined distinction between federal and local powers, and provision has also been made for a federal court. But if we proceed further, a striking difference confronts us. For a federal union to come into being, the existence of sovereign, independent or at least autonomous states is considered to be necessary. This was true in the case of the United States of America. In the case of Canada and Australia as well, self-governing colonies were existing before they were joined in a federation by *common agreement*. In the case of India, however, all the federating units did not enjoy sovereignty or even autonomy. The government of the whole country was unitary and the British Indian provinces were not self-governing but in law wholly subordinate divisions of a unitary state. Thus the process by which, the Indian Federation is to be formed is wholly different.

Different
process

Here first, autonomy had to be conferred on the Provinces in order to join them in a Federation. The Act provides for this two-fold process. Again it should be noticed here that there is no question of mutual agreement as far as the Provinces are concerned. They have to join the Federation perforce in obedience to the wishes of a foreign Legislature, *viz.*, the British Parliament. They cannot refuse to enter the Federation, even if they so choose.

On the other hand the second unit of the Federation, *viz.*, the States, are in theory sovereign and enjoy autonomy in their internal administration. They cannot, therefore, be forced to join the Federation against their wishes. They must do so voluntarily and agree to the surrender of their authority to the Central Authority. Thus the Indian States can refuse to join the Federation or they can demand a price for their consent. Again the British Indian Provinces could and have been treated in the way it was thought proper and more or less a uniform system has been evolved. The States being sovereign, cannot be treated in the same way, and the scheme of the Indian Federation has to be content with what the rulers of the States are prepared to give up in individual cases. Further the States are not homogeneous, and differ widely in area, population and wealth.

All these factors have reacted on the scheme of All-India Federation. In the words of Professor Keith, "This combination of wholly disparate elements gives a unique character to the federation and produces certain abnormal features." In the first place, the British Indian Provinces, under the scheme, are subject to a single system applicable to all but the States are not subject to the same uniform system. Both in regard to their relationship with the Federal centre and to their internal administration, they present a spectacle of diversity. According to Mr. H. B. Lees Smith, "The Indian Federal system will be of a kind hitherto unknown, for there will be one set of Federal powers for the Provinces and another for each of the Indian native states. The government of one part of the federation will be based upon parliamentary principles, that of the other upon Oriental absolutism."

The position of the Princes has made it possible for them to dictate terms. Although the States can claim only 23 per cent of the population of India, they will have 33 per cent of the representation in the

The position
of the States

Disparate
elements

Weightage
to the States

Lower Federal House and 40 per cent in the Upper Federal House. The pressure of the Princes has also reacted on the character of the Federal Executive, the Federal Legislature, the relation of the two Houses of the Legislature, and Federal Finance. The scheme of the Indian Federation, however, fulfils the last requirement mentioned above, as a provision is made for the establishment of a Federal Court in India for the settlement of constitutional disputes, though the final authority to interpret the Constitution will be the Privy Council.

In the end it should be noted that in a clear contrast to Canada and Australia full responsible government is denied under the Act both to the Federal Centre and the Provinces.

Full
Responsible
Government
denied

The Joint Parliamentary Committee defines a Federation as "simply the method by which a number of governments autonomous in their own spheres are combined in a single state." In its opinion the establishment of responsibility at the Centre need not be identified with the establishment of the Federation. It remarks; "A federal legislature capable of performing this function need not necessarily control the federal executive through responsible ministers chosen from among its members."

APPENDIX I.

INSTRUMENT OF ACCESSION

(**Provisional Draft**)

INSTRUMENT OF ACCESSION OF.....

(*Insert full name and title.*)

WHEREAS proposals for the establishment of a Federation of India comprising such Indian States as may accede thereto and the Provinces of British India constituted as autonomous Provinces have been discussed between representatives of His Majesty's Government of the Parliament of the United Kingdom, of British India and of the Rulers of the Indian States.

AND WHEREAS those proposals contemplated that the Federation of India should be constituted by an Act of the Parliament of the United Kingdom, and by the accession of Indian States.

AND WHEREAS provision for the constitution of a Federation of India has now been made in the Government of India Act, 1935, but it is by that Act provided that the Federation shall not be established until such date as His Majesty may by Proclamation declare and such declaration cannot be made until the requisite number of Indian States have acceded to, the Federation.

AND WHEREAS the said Act cannot apply to any of my territories save by virtue of my consent and concurrence signified by my accession to the Federation.

NOW THEREFORE

I

(*insert full name and title*)

Ruler of

(*insert name of State*),

in the exercise of my sovereignty in and over my said State for the purpose of co-operating in furtherance of the interests and welfare of India by uniting in a Federation under the Crown by the name of the Federation of India with the Provinces called Governors' Provinces, and with the Provinces called Chief Commissioners' Provinces, and with the Rulers of other Indian States, do hereby execute this my Instrument of Accession and acceptance of this Instrument, I accede to the Federation of India as established under the Government of India Act, 1935, (hereinafter referred to as "the Act") with the intent that His Majesty the King, the Governor-General of India, the Federal Legislature, the Federal Court and any other Federal Authority established for the purposes of Federation shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Federation, exercise in relation to the State of (hereinafter referred to as "this State") such functions as may be vested in them by or under the Act.

2. I HEREBY ASSUME the obligation of ensuring that due effect is given to the provisions of the Act within this State as far as they are applicable therein by virtue of this my Instrument of Accession.

3. I ACCEPT the matters specified in the First Schedule hereto as the matters with respect to which the Federal Legislature may make laws for this State, and in this Instrument and in the said First Schedule I specify the limitations to which the powers of the Federal Legislature to make laws for the State, and the exercise of the executive authority of the Federation in this State, are respectively to be subject.

Where, under the First Schedule hereto, the power of the Federal Legislature to make laws for this State with respect to any matter specified in that Schedule is subject to a limitation, the executive authority of the Federation shall not be exercisable in this State with respect to the matter otherwise than in accordance with and subject to that limitation.

4. The particulars to enable due effect to be given to the provisions of Sections 147 and 149 of the Act are set forth in the Second Schedule hereto.

5. Reference in this Instrument to laws of the Federal Legislature, include references to Ordinances promulgated, Acts enacted and laws made by the Governor-General of India under Sections 42 to 45 of the Act inclusive.

6. NOTHING in this Instrument affects the continuance of my sovereignty in and over this State or, save provided by this Instrument or by any law of the Federal Legislature made in accordance with the terms thereof, the exercise of any of my powers, authority and rights in and over this State.

7. NOTHING in this Instrument shall be construed as authorising Parliament to legislate for or exercise jurisdiction over this State or its Ruler in any respect.

PROVIDED that the accession of this State to the Federation shall not be affected by any amendment of the provisions of the Act mentioned in the Second Schedule thereto, and the references in this Instrument to the Act shall be construed as references to the Act as amended by any such amendment, but no such amendment shall unless it is accepted by the Ruler of this State in an Instrument supplementary to this Instrument, extend the functions which, by virtue of this Instrument, are exercisable by His Majesty or any authority in relation to this State.

8. The Schedules hereto annexed shall form an integral part of this Instrument

9. This Instrument shall be binding on me as from the date on which His Majesty signifies his acceptance thereof, provided that if the Federation of India is not established before the..... day of..... Nineteen hundred and....., this Instrument shall, on that day, become null and void for all purposes whatsoever :

10. I HEREBY DECLARE that I execute this Instrument for myself, my heirs and successors, and that accordingly any reference in this Instrument to me or to the Ruler of this State is to be construed as including a reference to my heirs and successors.

THIS INSTRUMENT OF ACCESSION (then follows the attestation to be drawn with all due formality appropriate to the declaration of a Ruler).

Additional Paragraphs for Insertion in Proper Cases.

A. WHEREAS I am desirous that functions in relation to the administration in this State of laws of the Federal Legislature which apply therein shall be exercised by the Ruler of this State and his officers and the terms of an agreement in that behalf have been mutually agreed between me and the Governor-General of India and are set out in the Schedule hereto :

NOW therefore I hereby declare that I accede to the Federation with the assurance that the said agreement will be executed and the said agreement when executed shall be deemed to form part of this Instrument and shall be construed and have effect accordingly.

B. The provisions contained in Part VI of the Act with respect to interference with water supplies, being sections 130 to 133 thereof inclusive, are not to apply in relation to this State.

C. WHEREAS NOTICE has been given to me of His Majesty's intention to declare in signifying his acceptance of this my Instrument of Accession that the following areas..... are areas to which it is expedient that the provisions of sub-section (1) of Section 294 of the Act should apply :

NOW THEREFORE I hereby declare that this Instrument is conditional upon His Majesty making such a declaration.*

*This is merely a provisional draft. It is believed that certain changes in this draft are contemplated as a result of the demand of the Indian Princes. It is expected that the revised draft will be made available to the Princes when His Excellency the Marquis of Linlithgow returns to India from England where he is at present.

CHAPTER III.

THE FEDERAL EXECUTIVE.

The Executive Authority of the Federation ; the Federal Executive ; the Governor-General—functions, appointment, salary, and allowances ; Reserved Subjects, defence, employment of Indian Troops abroad. Indianisation of the Army; the Commander-in-Chief; Ecclesiastical Department ; External Affairs ; Tribal Areas ; Special Responsibilities ; the doctrine of the Special Responsibilities and Reserved Powers of the Executive heads ; the prevention of any grave menace to the peace or tranquillity of India or any part thereof ; safeguarding the financial stability and credit of the Federal Government : the Financial Adviser ; safeguarding the legitimate interests of the Minorities ; protection of the interests of the Services ; discriminatory treatment against British goods and British trading interests ; the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ; administration of the Reserved Departments ; Responsibility to the Secretary of State and the British Parliament.

The Executive Authority of the Federation.—*The executive authority of the Federation extends

(a) to the matters with respect to which the Federal Legislature has power to make laws ;

(b) to the raising in British India on behalf of His Majesty of naval, military and air forces and to the governance of His Majesty's Forces borne on the Indian establishment ;

(c) to the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance, or otherwise in and in relation to the Tribal Areas.

This is subject to the provision that the said authority does not make an encroachment upon the domain of Provincial legislation, and regarding the States the limitations imposed by the Instruments of Accession of the States. The authority mentioned in (b) above comprehends within its scope subjects of His Majesty and natives of India or of territories adjacent to India to the exclusion of all others. This means that the authority of the Federation will be supreme over certain specified matters of general

*Sec. 8.

concern enumerated in the *Federal Legislative List*,* and under certain conditions* in the *Concurrent Legislative List*. It also covers the raising of His Majesty's naval, military and air forces but excludes the enrolment of one who is neither a subject of His Majesty, nor a native of India, nor of adjacent territories. Regarding the States the authority of the Federation is to extend over the sphere that has been ceded to its control in the Instruments of Accession executed by the States agreeing to join the Federation. In the remaining sphere, these States are to be self-governing. In the case of those States which do not agree to join the Federation, the present relationship with the Crown will remain.

Federal
Legislative
List and the
Concurrent
Legislative
List

The Indian
States

The Federal Executive.—The executive head of the Federation is to be the **Governor-General**, to be appointed by His Majesty by a Commission under the Royal Sign Manual. He will be the representative of the King and all executive power of the King in relation to India is granted to him. Besides acting as a constitutional head of a part of the administration, he is to discharge some Special Responsibilities and enjoys special powers, regarding certain subjects. Dyarchy has been introduced at the Centre. The functions pertaining to the important subjects of Defence, External Affairs except the relations between the Federation and any part of His Majesty's Dominions, Ecclesiastical Affairs, and relations with Tribal Areas are to be discharged by the Governor-General *in his discretion*, which means that he may or may not seek the advice of his Ministers, to be appointed under the Act, regarding these subjects, what to say of accepting it. He can, however, appoint Counsellors not exceeding three in number to help him in the exercise of these functions. In the transferred sphere or the subjects that have been put under popular control, the Governor-General is expected to play the part of a constitutional head and act on the advice of his Council of Ministers, not exceeding ten in number. Thus the Federal Executive is to consist of the Governor-General—who has certain subjects reserved *to his discretion* and certain Special Responsibilities subject to *his individual judgment*, and the Council of Ministers who will be constitutionally responsible for the administration of the part of the government transferred to their control.

The
Governor-
General

Dyarchy

Reserved
Subjects

Transferred
Sphere

The
Governor-
General and
his Ministers

* See below Chapter on 'The Federal Legislature.'

The Governor-General—Regarding the functions of the Governor-General it is laid down in the Act* as under :—

Functions

“1. Subject to the provisions of this Act, the executive authority of the Federation shall be exercised on behalf of His Majesty by the Governor-General, either directly or through officers subordinate to him but nothing in this section shall prevent the Federal Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor-General any functions conferred by any existing Indian law on any court, judge or officer, or on any local or other authority.

2. References in this Act to the functions of the Governor-General shall be construed as references to his powers and duties in the exercise of the executive authority of the Federation and to any other powers and duties conferred or imposed upon him as Governor-General by or under this Act, other than powers exercisable by him by reason that they have been assigned to him by His Majesty under Part I of this Act” *viz.*, by virtue of his appointment as the Crown Representative.

Appointment

He is to be appointed† by a Commission under the Royal Sign Manual and has (a) all such powers and duties as are conferred or imposed on him by or under this Act: and (b) such other powers of His Majesty, “not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him. The above proviso makes it clear that such functions are to be performed by somebody else. For this purpose it is laid down‡ that “His Majesty’s Representative for the exercise of the functions of the Crown in its relations with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of these functions (not being powers or duties conferred or imposed by or under this Act on the Governor-General) as His Majesty may be pleased to assign to him.” It is, however, further provided§ that it shall be lawful for His Majesty to appoint one person to fill both the said offices. Thus one and the same

The Crown Representative

person may hold both the offices, possessing a dual capacity—as Governor-General being the head of the Federation of India, and as Viceroy the representative of the Crown exercising the latter's authority and powers regarding Indian States refusing to join the Federation of India, and in respect of that sphere of administration regarding the Indian States not ceded to the control of the Federation.

Governor-General and Viceroy

Explaining the above provisions of the Act, the authors of the Joint Parliamentary Committee write as follows :—

".....But the Crown also possesses rights, authority and jurisdiction elsewhere in India (*viz.*, besides British India), including those rights which are comprehended under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State by the Governor-General in Council, and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they cannot under the new Constitution be exercised on behalf of the Crown by any federal authority, save in so far as they fall within the federal sphere, and only then when they affect a State which has acceded to the Federation. The White Paper proposes that (subject to the exception which we have mentioned) they should in future be exercised by the representative of the Crown in his capacity as Viceroy : and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of the Viceroy.... We agree that there must be a legal differentiation of functions in future and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose. But we assume that the two offices will continue to be held by the same person, and, this being so, we think that the title of Viceroy should attach to him in his double capacity...."

J. P. C.'s views

The salary of the Governor-General has been fixed in the Third Schedule of the Act to be Rs. 2,50,800 per annum besides allowances to enable him to discharge conveniently and with dignity the duties of his office. This amount is charged on the revenues of the Federation.

Salary, Allowances, etc.

Reserved Subjects. "Dyarchy, rejected by the Simon Commission, is deliberately installed in the federation." A part of the Federal administration is reserved to the Governor-General beyond the control of the Ministers responsible to the Legislature. Under the Act† this part of the administration covers the important subjects of Defence, Ecclesiastical Affairs, External Affairs except the relations between the Federation and any part of His Majesty's Dominions, and the functions in relation to Tribal Areas. The functions pertaining to these subjects are to be discharged by him *in his discretion*. The

Defence ;
Ecclesiastical
Affairs ;
External
Affairs.

The
Counsellors

Governor-General is, however, empowered* to appoint Counsellors, not exceeding three in number and whose salaries and conditions of service are to be such as may be prescribed by His Majesty in Council. These Counsellors are not responsible to the Legislature but to the Governor-General. They are to be *ex-officio* members of both Chambers of the Legislature without the right to vote. The Governor-General can appoint the best-suited individual as his Counsellor, and there is no bar even against a Minister being appointed as such, though he shall have to resign his position as a member of the Legislature in such a case.

Criticism

It will be noted that the above provisions are very wide so as to assure the unfettered discretion of the Governor-General. This involves certain risks from the point of view of Indian nationalism. By permitting the Governor-General to appoint the best suited individual as his Counsellor, he has been given the power to appoint a foreigner in preference to an Indian. Again by placing no bar against a Minister being appointed as a Counsellor, the way is left open to the corruption of Ministers which is a very potent danger in Indian conditions. Again the provision may prove to be a danger to the solidarity and collective responsibility of the Cabinet and may tend to weaken the position of the Prime Minister.

Indian
Demand

Defence.—Defence is a very important subject and no *swarajya* can be complete without it. Indian opinion has been agitating for a long time not merely for the Indianisation of the army in a defined number of years but also for a control over the army and the defence expenditure. It has, however, been recognised, generally speaking, by the Indian as well as the British side, that during the period of transition these subjects may be treated as reserved or at least differently from other subjects. But even the moderate Indian opinion summed up in the British Indian Memorandum declared that :—

"The White Paper provisions as relating to the Army, so far from giving Indians greater opportunities for influencing Army policy, actually make the constitutional position in some respects worse than at present. While at present the Governor-General and his Council, three members of which are Indians, 'superintend, direct, and control' the military government of India, the Governor-General, assisted by a Counsellor appointed at his discretion, will in future solely determine the Army policy. A direction in the Instru-

*Sec. 11 (2).

ment of Instructions to encourage joint consultation between the Ministers and Counsellors is obviously no satisfactory substitute for the opportunities which the present statute affords to the Indian public of expressing its views through the Indian Members of the Executive Council. Past experience of the actual working of a similar direction to Provincial Governors as regards joint consultations between Executive Councillors and Ministers justifies this statement."

The Joint Parliamentary Committee wrote that the members of the Statutory Commission suggested that the protection of Indian frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature, but as a responsibility to be assumed by the Imperial Government. This suggestion was rejected by the Committee but it thought that if the problem of defence was not to stand in the way of the grant of responsibility at the Centre, some form of dyarchy, 'with all its admitted disadvantages' was inevitable.

" But the form adopted must be such that in the sphere of defence the Governor-General's responsibility will remain undivided and unimpaired and that the Department of Defence will be under his exclusive direction and control. It should be remembered also that it is through this agency that the obligation will be discharged which the Crown has assumed for the protection, whether externally or internally, of the States."* The Committee further stated, " the special responsibility which it is proposed that the Governor-General shall have in respect of any matter affecting the administration of the Departments under his direct control will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy, and he will also be able to avail himself of the power which the Federal Government will possess to give directions as to the manner in which the executive authority in the Provinces is to be exercised in relation to any matter affecting the administration of a Federal subject, since defence is nonetheless a Federal Subject because reserved.....In all matters of this kind where there is a difference of opinion with other authorities, the final responsibility for a decision if the defence policy is concerned, must rest with the Governor-General, his views must prevail, and he must have adequate means of giving effect to them."†

The Joint Memorandum urged that (1) the Governor-General's Counsellor-in-charge of the Department of Defence should always be a non-official Indian, and preferably an elected member of the Legislature or a representative of one of the States ; (2) that the control exercised by the Finance Member and the Finance Department should be continued ; and (3) that all questions relating to army policy and the annual army budget should be considered by the entire Ministry, including both Ministers and Counsellors ; though in

Defence reserved to the Governor-General

Simon Commission's suggestion rejected

Dyarchy recommended

J. P. C.'s observations

Joint Memorandum's demand

case of difference the decision of the Governor-General must prevail. The J. P. C. observed regarding the first suggestion that the Governor-General's choice ought not to be fettered and that he should be free to select the best suited person for the post. Regarding the second it seemed necessary to them that the Military Finance and the Military Accounts Department should be brought under the Department of Defence, since the responsibility for the expenditure which they supervise can only be that of the Governor-General. But the transfer would not preclude an arrangement whereby the Federal Department of Finance is kept in close touch with the work of both these branches and the Committee did not doubt that some such arrangement ought to be made. Regarding the third point they commended the proposal of the White Paper that the Governor-General's Instrument of Instructions should direct him to consult the Federal Ministers before the army budget is laid before the Legislature; and so long as nothing is done to blur the responsibility of the Governor-General it seemed to them not only desirable in principle, but inevitable in practice, that the Federal Ministry, and in particular, the Finance Minister, should be brought into consultation before the proposals for defence expenditure are finally settled.* In pursuance of the above it has been laid down in the Draft Instrument of Instructions of the Governor-General as follows:

**Provision in
the
Instrument
of
Instructions**

"And we desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangements as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Legislature."[†]

**Question left
vague**

The Employment of Indian Troops Abroad.—“The Act leaves vague the delicate question of the use of Indian troops outside India.” The J. P. C., however, wrote that there was no ground for assuming a *prima facie* objection to the loan of contingents on particular occasions.

“If on such occasions the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense, and secondly, whether he can spare the troops having regard to all the circumstances at the time. Both these decisions would fall within the exclusive sphere of his responsibility.....

*Para 177.

†Para XIX.

.....Our proposal is that, when the question arises of lending personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision, do not involve the Defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry."*

J. P. C.'s views

Regarding the financial aspect of the question, it has been laid down in the Act that no burden shall be imposed on the revenues of the Federation or the Provinces except for the purposes of India or some part of India. It is suggested by the J. P. C. that a contribution in the general interest of India, even if that does not involve directly the defence of India, would come within the scope of that provision. But in such a case the contribution would need to be ratified by the Federal Legislature.

Financial aspect of the question

Indianization of the Army.—The Act also does not provide for the Indianization of the Defence Forces in a fixed time limit, though an attempt was made to raise the question at the Round Table Conference. During the debate in the Committee stage, a Labour Member moved for adoption that

No time limit

"It shall be the duty of the Governor-General, in exercising his functions with respect to defence, to make provision for the progressive Indianization of the defence forces with a view to the completion of this process within a period not exceeding thirty years, and thenceforth the Governor-General's function with respect to defence shall be exercised by him acting with his Ministers, and the special responsibility of the Governor-General in the exercise of his functions with respect to the prevention of any grave menace to the peace or tranquillity of India, or any part thereof, shall cease." Sir Samuel Hoare replying referred to the steps already taken in the direction and declared. "We cannot say that in a period of x years, in 20, 30, or 40 years or whatever it may be, this process is going to succeed or is going to be complete. The J. P. C. also wrote that "the Governor-General's Instrument of Instructions will, we understand, formally recognize the fact that the defence of India must to an increasing extent be the concern of the Indian people, and not of the United Kingdom alone. With this general proposition we are in entire agreement," It repeated the conclusion of the Simon Commission that "the issues involved are too vital, and the practical difficulties too great, to justify a precipitate embarkation on a wholesale process of substituting Indian for British personnel in the Indian army." It concluded "It is in our judgment impossible to include in the Constitution Act or in any other statute a provision for the complete Indianization of the Army within a specified period of time."† It should be noted, however, that it has been laid down in the Instrument of Instructions to the Governor-General that "he shall bear in mind the desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India." ‡

Sir Samuel Hoare's reply

J. P. C.'s observation

Instructions to the Governor-General

* Para. 178. † Para. 79, 180, 181. ‡ XVII.

The Commander-in-Chief.—Although the executive authority of the Federation vested in the Governor-General as the King's representative includes the superintendence, direction and control of the military government, the command of the Forces in India is to be exercised by the Commander-in-Chief to be appointed by Warrant under the Royal Sign Manual*. It has been laid down in the Draft Instrument of Instructions to the Governor-General that—

Provision in
the Instru-
ment of
Instructions

"In the administration of the Department of Defence, Our Governor-General shall obtain the views of Our Commander-in-Chief on any matter which will affect the discharge of the latter's duties, and shall transmit his opinion on such matters to Our Secretary of State whenever the Commander-in-Chief may so request on any occasion when Our Governor-General communicates with Our Secretary of State upon them."†

Use of the
Department

Ecclesiastical Department.—According to Sir Samuel Hoare, the expenditure of this Department covers, first, the chaplains for the Army, and secondly the chaplains for the Services where the latter need spiritual ministration. According to the J. P. C. the present annual expenditure of the Department being approximately 40 lakhs, Mr. Attlee suggested that

"It would be very much better to abolish this department and include religious ministrations as an integral part of the Army administration. He would go further and propose that as long as we have an Army and Services in India whose spiritual needs are entirely different from those of the people amongst whom they serve, it would be a gracious act on our part if the necessary expenses were placed on British instead of on Indian revenues.....

J. P. C.'s
Approval

The J. P. C., nevertheless approved the proposal to make the ecclesiastical affairs a reserved department but suggested that the Constitution Act should specify a maximum figure above which the annual appropriation for ecclesiastical expenditure cannot go.‡ Sir Samuel Hoare in one of the speeches declared that it shall not exceed 42 lakhs of rupees. It may be noted here that the Indian opinion is not very favourably inclined towards this expenditure.

External Affairs.—The J. P. C. wrote :

Intimate
connection
between
Foreign
Policy and
Defence

"The Department of External Affairs is in our opinion rightly reserved to the Governor-General, if only because of the intimate connection between foreign policy and defence." They continued : "It was urged before us that the making of commercial or trade agreements with foreign countries was essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor-General."§

* Sec. 4. † Para. XVII. ; Para. 186. § Para. 184.

On the analogy of British practice they suggested that agreements of any kind with a foreign country must be made by the Governor-General, even if on the merits of a trade or commercial issue he is guided by the advice of the appropriate Minister. It will be clear from the above that all treaties, of whatever kind, will be negotiated by the Governor-General, though he will consult his Ministers regarding commercial treaties. But if this is narrowly interpreted the Governor-General is empowered to negotiate a commercial treaty with a foreign country even against the advice of the Ministers and a discussion on the topic can be stopped as falling within the scope of the reserved Department of External Affairs. There is, however, one important concession to Indian opinion, when the relations between India and other parts of His Majesty's Dominions are excepted from the reserved domain. Indian opinion is very sensitive on the question of the condition of the Indians overseas, particularly in South Africa and other parts of His Majesty's Dominions, where Indian nationals have not always been fairly treated. Under the new regime, the Federal Ministry will be in charge of the subject and is likely to base its policy on popular opinion.

Commercial Treaties

Relations with the Dominions

The question of **Tribal Areas** is a very difficult question. It is the question of relationship and control of the independent and semi-independent tribes on the frontiers of India. It is closely connected with the question of defence as these tribes have got much in common with the people living on the other side of the frontier of India and are easily excitable on various grounds. The relationship with them has, therefore, been reserved. It may be noted here that Indian opinion regarding relationship with these tribes is divided and has often criticised the policy of the Government which has often varied. Advanced nationalist opinion, however, does not attach any importance to the arguments for reserving any department to the control of the Governor-General without any reference to the Legislature and advocate the transfer of full control over Defence and External Affairs for the reason, if not for any other, that the Indians have a right to be masters in their own house.

Tribal Areas

Nationalistic opinion

Special Responsibilities.—In the remaining sphere of the administration, the Governor-General is to be aided and advised by his Ministers who will

Individual
judgment

be responsible to the Legislature. This is subject to the proviso that in the case of his Special Responsibilities, functions regarding to which are to be performed by him by the exercise of his *individual judgment*, he may ignore the advice of his Ministers, if he so chooses. The following constitute his Special Responsibilities under the Act* :—

(a) the prevention of any grave menace to the peace or tranquillity of India or any part thereof ;

(b) the safeguarding of the financial stability and credit of the Federal Government :

(c) the safeguarding of the legitimate interests of Minorities ;

(d) the securing to, and to the dependants of persons who are or have been members of the public service of any rights provided or preserved for them by or under this Act and the safeguarding of their legitimate interests ;

(e) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation : *viz.*, the prevention of discriminatory treatment of British subjects and trading companies ;

(f) the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment ;

(g) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof ;

(h) the securing that the due discharge of his functions with respect to matters regarding which he is by or under this Act required to act *in his discretion*, or to exercise *his individual judgment* is not prejudiced or impeded by any course of action taken with respect to any other matter.

It is laid down in the Act that* if and in so far as any Special Responsibility of the Governor-General is involved, he shall in the discharge of his functions exercise his individual judgment as to the action to be taken. It has also been provided that if any question arises whether a particular matter is a matter with respect to which the Governor-General is required to act in his discretion or exercise his individual judgment the decision of the Governor-General shall be final.

The Doctrine of the Special Responsibilities and Reserved Powers of the Executive Heads.*

The vesting of the Special Responsibilities and the Reserved Powers with the Governor-General, and the Governors, has not been well received in India by advanced political opinion. It is attacked on various grounds. It excludes (and can be taken to mean that) a very great part of the administration where the executive heads may or may not consult their Ministers and may not act according to their advice. Secondly it strengthens executive independence and thus militates "against the development of that constitutional convention, which would make the Governor (for the matter of that, the Governor-General) a truly constitutional executive head, with no activity apart from that advised by his responsible Ministers." Thirdly the nature and extent of these Special Responsibilities are so vague and undefined as to give unlimited scope to irresponsible independent executive action and in the case of pig-headed and conservative or reactionary executive heads can be made to stand in the way of all progress and beneficial social, political and economic reforms. According to Dr. Sir Shafaat Ahmad Khan, "the field of special responsibility permeates the whole administration, and it is difficult to suggest any subject, whether in the Federal or the Provincial field, in which it may not emerge at any moment." Thus mere lack of tact or mutual trust, or difference of view-points between the parties—the irresponsible executive heads and the responsible Ministers, may be sufficient to produce mutual conflict or bickerings. Again in the words of Prof. K. T. Shah, the Special Responsibilities "are calculated in practice to subvert all discipline in the administrative services of the country, and to demoralise the Responsible Government of the Province (and in the same way at the Centre though within limitations). The Ministers would not feel any sense of responsibility in tendering their advice on questions in which they know that the Governor is not bound to follow their advice. They would, therefore, naturally be either indifferent or reckless. Moreover, the fact that in several cases the subordinates are entitled by law to appeal to the Governor, or required not to communicate information

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*In continuation of the discussion here, please also refer to the Chapter on 'Provincial Executive.'

to their official chiefs, namely the Ministers, is sufficient to undo or weaken the hands of official discipline which are indispensable in the proper government of the country." On account of these and other grounds the cardinal principle of the Act, viz., these Responsibilities of the executive heads, has been taken exception to in India. It has been urged that the doctrine of the Special Responsibilities has been evolved to meet the special circumstances of India, under British imperialist domination. They represent "safeguards" against undue risks, changes, and reforms demanded by progressive nationalist sentiment without the consent of the executive heads who in these respects are ultimately responsible to the British Government at home.

Necessity of
safeguards

Be it as it may, one has to concede the necessity of safeguards or special responsibilities in principle in the constitution of a country for the reason that means have to be provided for the prevention of mischief, wrecking or subverting the Constitution, creating a state of anarchy, trying too dangerous or risky experiments, preventing injustice being done to various interests in the country, and marshalling the resources of the country for the safety of the realm in time of need, emergency or war. Again these responsibilities and the accompanying special powers to discharge them have to be placed in the hands of the executive heads for the reasons that they are above changing party-governments and party conflicts, and the government is to be run through them and often in their names. Thus the Special Responsibilities and the Special Powers have been placed in the hands of the Governor-General and the Governors; and they could not have been placed in the hands of the responsible Ministers with changing and varied policies.

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But in the case of this country, we have to take note of the special circumstances that exist here. India is not a country which is self-sufficient politically or economically. It is not a sovereign state where the people are supreme. It is a dependency of the British Crown and even under the new Act that status is not materially changed. The ultimate responsibility of the good government of the country rests with the British King-in-Parliament and through it to the British people. Apart from her political limitations, India is admittedly under the grips of an imperialism which has both a political as well as an economic aspect. On the other hand the people of India are struggling to win com-

plete control over the affairs of their country. A strong political body, the Indian National Congress, makes no secret of its aims and objectives. It stands for the claims of the Indians to complete independence and is not much convinced of the necessity of safeguards. Thus there is mutual distrust between the parties—the British Government and the British people and the Indian National Congress supported by strong Indian opinion. The latter does not accept the theory of partnership between Britain and India regarding the government of India. This fact must not be lost sight of while examining Indian politics and application to them of general political principles. When the application of the latter seems to be sound and proper in the case of other countries, on account of the peculiar conditions of this country above referred to, that may not be so in this case. Here the same thing may mean and work differently in actual practice and with different results. This is exactly the case in regard to these Special Responsibilities and Special Powers. While it seems to be constitutionally sound to vest them with the Governor-General and the Governors, yet in actual practice it may not be in the real interests of the people of the country. The Governor-General and the Governors are not to be appointed or removed by the Indians; they are not responsible to them or their Legislatures. Rather they are ultimately responsible to the British Government and the British people. And the placing of Special Powers in their hands, it is urged, means placing of those powers in the hands of the British Government and beyond the reach of the Indian people. Again it is feared that these powers may not always be used in the real interests of the Indians, particularly because all the safeguards, constituted by the Special Responsibilities of the Executive Heads are not ostensibly in the interests of the Indians; at least they are not to their liking. Thus the progressive Indian opinion is very critical of these Special Responsibilities.

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The Special Responsibilities.—A fuller justification will be available of this attitude, if a closer examination is made of the actual 'Special Responsibilities.' The first of them is the prevention of any grave menace to the peace or tranquillity of India or any part thereof. In this connection the J. P. C. wrote :—

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to their official chiefs, namely the Ministers, is sufficient to undo or weaken the bands of official discipline which are indispensable in the proper government of the country." On account of these and other grounds the cardinal principle of the Act, viz., these Responsibilities of the executive heads, has been taken exception to in India. It has been urged that the doctrine of the Special Responsibilities has been evolved to meet the special circumstances of India, under British imperialist domination. They represent "safeguards" against undue risks, changes, and reforms demanded by progressive nationalist sentiment without the consent of the executive heads who in these respects are ultimately responsible to the British Government at home.

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of this special responsibility; firstly, that the special responsibility itself should be restricted to cases in which the menace arises from subversive movements or activities tending to crimes of violence; and secondly, that any action taken by the Governor under it should be confined to the department of law and order. We cannot accept these suggestions. Terrorism, subversive movements, and crimes of violence, are no doubt among the graver menaces to the peace or tranquillity of a Province; but they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw. Still less can we see any justification for restricting the Governor's action to the department of the law and order, by which we suppose is meant the police department. There are many other branches of administration in which ill-advised measures may give rise to a menace to the peace or tranquillity of the Province; and we can readily conceive circumstances in connection with land revenue or public health to mention no others, which might well have this effect.**

J. P. C.'s
View

Scope

It is clear from this that this Special Responsibility is intended to bear widest possible meaning and scope. It can be used to stifle all violent and non-violent movements to give vent to political discontent or to demand political reforms. It can be exercised "with a view to stamp out the least ember of self-respect among the people, or their desire for political self-expression." Even social and religious movements can be stifled on this ground. The Governor, or the Governor-General, can, if he likes, invoke this and take control of whole or part of the administration in their respective spheres in face of a temporary orgy of communal passions accompanied by riots. And what is very important, the Governor and for the matter of that the Governor-General, can stop any reform of far-reaching importance on this ground even if the Ministers want to carry it out and are prepared to take up the responsibility for that. The last sentence in the above quotation from the J. P. C. seems to suggest that in the Provincial sphere it may not be possible for the progressive Ministers to change the fundamental principles of land revenue systems prevalent in different parts of India.† Thus although

*See Para 79. In Para 169, the J.P.C. writes: "All that we have said on (a) in relation to the Governor of a Province applies with equal, if not greater, force in the case of the Governor-General, and we have little to add to it. The Governor-General, as the authority in whom the exclusive responsibility for the defence of India is vested, must necessarily be free to act according to his own judgment, where the peace or tranquillity of India, or any part of India, is threatened, even if he finds himself thereby compelled to dissent from the advice tendered to him by his Ministers within their own sphere."

†The fear has not materialised in the case of the Provinces to the extent it was expected. See Chapter on 'Provincial Executive.'

Need for the
Responsibility

there is much ground for apprehension regarding this Special Responsibility, the need for the responsibility itself and placing it on the executive head may not be questioned. In actual practice much will depend how the executive heads in particular and the Ministers interpret it.

The second Responsibility, viz., the safe-guarding of the financial stability and credit of Federal Government, is also as all-embracing and exhaustive as it is necessary. It is a very important safeguard meant, from the nationalist point of view, to protect the British financial interests in India may be to the detriment of the real interests of India. From the point of view of the British capital, it is absolutely essential, as their huge capital invested in India and other financial interests including the so-called Public Debt of India, and the Home Charges, etc. must be safeguarded, particularly in view of the much talk regarding repudiation of debts, indulged in by the extremist nationalist opinion in India. The J. P. C. wrote in connection with it*:-

"Federal Ministers will under the White Paper proposals become responsible for finance, but (to quote the Second Report of the Federal Structure Committee of 13th January, 1931) it is recognised to be "a fundamental condition of the success of the new Constitution that no room should be left for doubts as to the ability of India to maintain her financial stability and credit, both at home and abroad," and that it is therefore necessary "to reserve to the Governor-General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were being pursued which would in his opinion seriously prejudice the credit of India in the money markets of the world." To this we might add that the grave responsibilities which attach to the Governor-General in the matter of defence afford a further and no less cogent reason. In our opinion, though the expression "budgetary arrangements and borrowing" indicates generally the sphere in which it is desirable that the Governor-General should have power, if necessary, to act, it would be unwise to attempt to define this special responsibility in more precise terms than are proposed in the White Paper. Any further directions for the guidance of the Governor-General would find a more appropriate place in his Instrument of Instructions, as indeed the Joint Memorandum of the British-India Delegation suggests." In pursuance of the above it has been laid down in the Instrument of Instructions to the Governor-General as follows : "It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations."†

Financial stability and credit

Need from the British point of view

J. P. C.'s observations

Provision in the Instrument of Instructions

J.P.C.'s
Recommendations

The Financial Adviser. "The White Paper also proposes, rightly in our opinion that the Governor General should be empowered in his discretion, but after consultation with his Ministers, to appoint a Financial Adviser to assist him in the discharge of his special responsibility....We think that he must be regarded technically as the Governor-General's adviser, but his advice ought to be available to Ministers and we hope they will freely consult him. We have no doubt that the Governor-General will always endeavour to secure the appointment of a person acceptable to his Ministers... We think that such an adviser, if the right selection is made, may prove of the greatest assistance both to the Governor-General and to Ministers, and that the more successful he is in the performance of the duties attaching to his office, the less likelihood will there be of the necessity arising for the exercise by the Governor-General of his special power in the financial field."^{*}

Appoint-
ment and
Functions

In pursuance of the above it has been laid down in the Act^t that the Governor-General may appoint a person to be his Financial Adviser, who will assist him by his advice upon any matter relating to finance with respect to which he may be consulted by him in the discharge of his Special Responsibility for safeguarding the financial stability and credit of the Federal Government. He is to hold office during the pleasure of the Governor-General. His salary and allowances, and the members of his staff and the conditions of their service are to be determined by the Governor General. The latter is to exercise these powers *in his discretion*, provided that, when he has decided to appoint a Financial Adviser, he should, before making any appointment other than the first appointment, consult his Ministers as to the person to be selected.

The Indian
point of
view

The Indian point of view regarding this very important safeguard was given expression to by the Labour Members of the Joint Select Committee when they observed :

"It is, in our view, useless to give power and responsibility on the one hand and take it away with the other. If Indian representatives are not capable of conducting on sound lines the finances of the Federation, they are not capable of Self-Government."^t Mr. Cocks observed regarding the provisions for the appointment of the Financial Adviser : "This clause means that Indian ministers must be governed by orthodox views on finance. It means that they may not adopt a policy which is objectionable to the banks, to the Reserve Bank of India or to the Bank of England.....So it really means—I am sorry to bring in King Charles' head again—that Mr. Montagu Norman, besides being virtually King of England, will be virtually Emperor of India." Lord Stafford Cripps also objected to the appointment of the Financial Adviser and observed: "From our

*Para 170. tSee 15. ;Para 50 of the Minority Report.

experience of the sort of financial adviser who has gone to different parts of the Empire in the not very distant past, it is probable that he will be the type of person who will try to curtail every social service because of his quite genuine belief in the very orthodox system of capitalist finance. Therefore, you will have a splendid method by which to shut down the whole of the effective work which might otherwise be done by the Indian ministers."*

To sum up, it may be stated that this is a very important safeguard. If the Governor-General were an Indian and responsible to the Indian people, liable to be removed by them, probably no objection will be taken to this Special Responsibility. But under the circumstances he, as a representative of British Imperialism in India, and responsible to the British Government at home and through it to the British people, is not trusted by the nationalist opinion in India to discharge always this responsibility in the real interest of India, even if it be against the interest of Britain. It is feared that this power may be utilised to safeguard British financial interests in India, which may not be allowed to follow an independent policy of her own for the good of her people. The appointment of the Financial Adviser beyond the control of the responsible Minister is particularly taken exception to because there is a danger of his setting himself up as a super-controller over the head of the Federal Government and obstructing the economic progress of the country by sticking to the theories of imperialist finance or by acting as a super-sensitive watch-dog on behalf of British financial interests. Again this is not very flattering to Indian national self-respect that they should not be trusted with the unfettered control of the financial policy of their own country. In actual practice, however, the working of the machine will depend very much on the personalities of the Governor-General, the Financial Adviser, and the Ministers, and the spirit with which they undertake to discharge their responsibilities and duties.

The third Responsibility, *viz*, the safeguarding of the legitimate interests of the Minorities has a special significance in this country. Indian population is not a homogeneous whole; rather it is divided racially, culturally, economically, religiously, and politically into various groups. Instead of blurring these ap-

Indian
Misgivings.

India—a land
of Majorities
and Minorities.

*Debates, House of Commons.

parent and natural differences, they are being kept alive and even fed by uncontrollable forces to the chagrin of nationalist India. India has thus become a land of religious-cum-cultural communities, economic groups and political parties with ill-defined programmes. There is considerable overlapping among these groups. For some time past religion in particular has provided a distinguishing label for the various elements in the Indian population which has been dealt with as Hindus, Muslims, Sikhs, Christians, Parsis, etc. They have often quarrelled among themselves on the question of rights of religious, economic, as well as political nature. These communities have been called Majorities and Minorities according to their numeral strength. Besides there are other minorities on social lines such, as the so-called Depressed Classes among the Hindus, and the Non-Brahmans in certain Provinces. (If things go on as they are, there is a likelihood of similar minorities rising among other communities, as the Qadianies among the Muslims, the Mazhabis among the Sikhs, the Indian Christians among the Christians and so on). Economic minorities are represented by the landlords and big industrialists. Thus India is a land of majorities and minorities. So far communal majorities and minorities have been very prominent and their mutual distrust and insistence on the safeguarding of their respective rights have resulted in the creation of the acutest problem in Indian politics—the Communal Problem. Taking only one of its phases—the Hindu-Muslim phase, it is noticed that the Hindus though in majority in India taken as a whole, are in majority in certain Provinces and in minority in others. The Muslims, though in minority in India taken as a whole, are in majority in certain Provinces and in minority in others. The minorities are afraid that the majorities will not do justice to them and that their legitimate interests—whatever that may mean, will not be respected by them. Thus the Muslims do not trust Hindu majorities in Hindu majority Provinces and the Hindus do not trust the Muslim majorities in Muslim majority Provinces. This distrust tended to stand in the way of political progress and grant of responsible government, and still persists. The obvious solution of the Problem is that Indian leaders and masses should leave thinking in terms of Hindus and Muslims and allow the division to take place on economic and political lines. This has not so far been possible and will probably take

time. The other solution to assure the minorities was to fix up the responsibility for safeguarding their interests on some body who should be impartial, permanent, and above parties and party-strife, and who should be in a position to enforce his will. This body is obviously the Governor-General in the Federal sphere, and the Governor in the Provincial sphere.

Responsibility of the Governor-General

Thus this Special Responsibility has been incorporated in the Act in answer to Indian demand, however misguided it might have been, and therefore we have ourselves to thank for it. But when we come to the actual wording, we find that it is much too vague. No definition is given of *Minorities*. To-day they are generally understood to mean social and communal minorities; but this line of division is artificial and may disappear under the pressure of economic forces. When that happens certain economic interests such as the Landlords may claim to be a minority whose legitimate interests the Governor, or the Governor-General, may be called upon to safeguard. This has now actually happened in the U. P. and Bengal. In the Punjab, the Non-Agriculturists are claiming to be a minority as opposed to the Agriculturists. Similarly some groups of people may claim to be minorities when certain questions of social reform are involved. Extending protection to the rights of such minorities would mean stopping the social and economic progress of the country.

Vagueness

Again the legitimate rights, which are sought to be protected, are not defined though the British Indian Delegation asked for it. Before the Joint Select Committee the Secretary of State for India was also asked if he could define them by adding,

Rights Undefined

"in the matter of adequate provision for education, entry in public service, and representation in public bodies." He replied: "It would be a mistake to make the definition more explicit. The more explicit we make them, the more we shall add more and more conditions to them, and even at the end of it we may find that the definition is inadequate for a particular situation that may arise."

Thus the phrase is as vague as ever.

The J. P. C. observed about this Special Responsibility:—"With regards to (b), the Joint Memorandum suggests that the phrase "legitimate interests" should be more clearly defined, and that it should be made clear that the minorities referred to are the racial and religious minorities generally included by usage in that expression. We doubt if it would be possible to define "legitimate interests" any more precisely. The obvious intention is to secure some means by which minorities can be reasonably assured of fair treatment at the hands of majorities, and "legitimate interests" seems to us a very suitable and reasonable formula. Nor do we

P. C's observations

Provision in
the
Instrument
of Instruc-
tions

think that any good purpose would be served by attempting to give a legal definition of "minorities", the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford..... We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. Nevertheless to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plain, and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform merely because it is resisted by a group of persons who might claim to be regarded as a minority."* In pursuance of the above, it has been laid down in the Instrument of Instructions to the Governor-General : "Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public."†

Thus the Governor-General has been charged by these Instructions to safeguard the interests of the minorities who have also been assured a proper share of the fishes and loaves of office by continuation of the present policy regarding communal representation in the Services. The latter policy can only be modified when the Governor-General is *fully* satisfied that it is essential in the interests of the communities concerned or the welfare of the public.

The Special Responsibility in (d) relates to the protection of the interests of the Services.

"The White Paper proposals of the Government contained a list of principal existing rights of officers appointed by the Secretary of State for India as well as a list of principal rights of persons appointed by authority other than the Secretary of State in Council. Part X of the Act deals comprehensively with various grades of public services,..... Sub-section (d) is designed to protect the public servants or their dependents from infraction of rights guaranteed to them in the Act." †

*Para 79. †Para XI.

†Dr. Sir Shafaeet Ahmed Khan : The Indian Federation, page 53.

There are two angles from which this sub-section can be looked upon. In the first instance it is well understood in India that it is designed to protect the vested interests of the members of the Indian Civil Services and their dependents. India has always been looked upon as a land of opportunities where British youngmen can make their mark, satisfy their ambitions, make money, and gain administrative experience. So far they have played a very important part—for good or for evil, in carrying on the administration and even in settling policies. In course of time they have come to be organized in a highly organized and influential bureaucracy, whose opinions and actions cannot be ignored by statesmen.

Indian point of view

The members of this bureaucracy are beyond the control of the people of India and are not responsible to them. They generally—with honourable exceptions, looked upon themselves as rulers and not servants of people so that the term for them is 'Government Servants' and not 'Public Servants.' Their tone, generally speaking, has, therefore, been autocratic rather than democratic. Although, it cannot be said that they have always acted against the interests of the people, yet there is no doubt that there is no love lost between them and the representatives of the nationalist opinion who claim to stand for the real good of the masses. Besides this question of tone, the Services have always shown themselves to be highly conservative and against the political advance of India, at least to the extent nationalist opinion in India would like to go. Again many of them, being foreigners, cannot and do not understand real India and her real needs. They do not come into close touch with the masses and therefore do not understand them. Further the Indian Civil Service is the most highly-paid Service in the world. The bill for their salaries, allowances, pensions, etc., is certainly not in keeping with the appalling poverty of the Indian masses. Lastly in popular imagination these civil servants are men who are responsible for lathi charges and the policy of repression. On account of these reasons, the Indian Civil Servants do not receive the amount of sympathy that is due to public servants, and there has been much talk of reducing their salaries and allowances, decreasing their privileges and concessions,

Distrust of the Civil Servants

Necessity
for the
safeguard

and even to eliminating of reducing the British element as far as it may be possible.*

In view of such sentiments towards them, the Services and their supporters insisted on 'safeguards' for the protection of their rights which are in the nature of vested interests. With the influence they could command, they were able to get this sub-section inserted in the Act. Apart from this a special chapter in the Act is devoted to the protection of their rights and privileges, which shall be discussed at the proper place.

Indian
opinion

Indian opinion, however, definitely resents this safeguard. Although no sensible Indian would like to make an encroachment on the legitimate rights of the Services and to treat them unjustly in other ways, yet the Indians do consider the Services as 'pampered', and desire to modify the conditions of service in accordance with the prevailing circumstances in the country. Indian opinion certainly stands for drastic reduction in the salaries in order to secure money for social services. but this is not possible under the Act at least as far as the superior services are concerned.

Need for
having a
contented
Civil Service

Regarded from the other point of view, this safeguard will appear in a different light. There is no denying the fact that no administration can be carried on without the loyal co-operation of the Services. For that the Services have to be satisfied and made to feel contented with the conditions of service. And for this purpose this safeguard is essential because they have to be kept beyond party influences and strife, and political acrimony. This is as much in the interest of popular Ministries as in the interest of the Services. But the objection is taken on the ground that while in other countries including Britain, the Services are functioning quite satisfactorily under popular control, an exception has been made in the case of India. This leads to the suspicion, however ill-founded, that the Services do not trust the popular Ministries and are not prepared to adapt themselves to changing circumstances.† Particularly objection is taken to this safeguard because it proposes to keep the Services

*The actual working of the Constitution in the Provinces has proved many of these fears to be baseless. The Services on the whole seem to have adapted themselves admirably to the new conditions, and are helping the Ministers in the service of the people.

†As has already been pointed out at least this suspicion seems to have proved to be wrong by the experience in the Autonomous Provinces.

at too high a level regarding emoluments and other conditions, etc.

In connection with this the J. P. C. wrote :—“ the Joint Memorandum proposes that here also the expression “legitimate interests” should be clearly defined, and that the Governor’s special responsibilities should be restricted to the rights and privileges guaranteed by the Constitution. We assume that the intention of the White Paper is to guarantee to public servants not only their legal rights but also equitable treatment, a thing not susceptible in our opinion of legal definition. The authors of the Joint Memorandum would no doubt say that Ministers can be trusted to act in these matters in a reasonable way, and we do not doubt that this is so ; but we think that they should also assume that neither will Provincial Governors act unreasonably in discharging the special responsibilities which the Constitution Act will impose upon them. If Ministers in fact act reasonably, as no doubt they will, the occasions on which a Governor will find it necessary to dissent from the advice which they tender to him may never in practice arise.”* It will be clear from this that no case has been made out for this safeguard by the J. P. C., but be it as it may, the right of the Services have been fully safeguarded under the new Constitution. In the Instrument of Instructions, the Governor-General has also been charged as follows :—“ In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.”†

Safeguards in (e) and (f) are a sop to the British trading interests interested in Indian trade. India is a very important market for the consumption of British goods as well as for the supply of raw material. It is also a field for profitable investment so that a huge amount of British capital is invested in the country. In view of the expression of extremist national opinion in India in connection with the Public Debt† of India, the resort to boycott of British goods as a political weapon, and the growing industrialization of the country, the British vested interests in this country demanded and secured these safeguards. Sub-section (e) vests in the Governor-General the power to secure in the sphere of “executive action” purposes and objects which Sections 111—121 secure in the sphere of legislation. The Governor-General is vested with executive power to enforce the provisions relating to the prevention of discrimination against British goods by the Indian Legislature and other bodies. The J. P. C. observed in connection with this safeguard :

“The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discri-

J.P.C.’s
observations

The Instru-
ment of
Instructions

Safeguards
for
British
Trading
Interests
in India

J.P.C.’s
observations

mination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-born subjects. Witnesses who appeared before us spoke in the same sense and the British-India Delegation, in their Joint Memorandum, state that on the question of principle there has always been a substantial measure of agreement in India. On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment for British trade as against Indian trade. Their policy is, in fact, one of a fair field and no favour. The question, therefore, resolves itself into a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned. It may, indeed, be asked why, in view of the assurances of which we have spoken, it is necessary to deal with this matter at all in the Constitution Act, and to this our answer must be that, here again, utterances have been made which could not fail to give rise to suspicions and doubts, and that statutory provision by way of re-assurance is an evident necessity.

Sub-section (f) refers to discrimination against British imports. In making recommendation to this end, the J. P. C. wished to make it clear that they contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal Convention.

It observed: "It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived, not in the economic interests of India but with the object of injuring the interests of the United Kingdom. It should further be made clear that the "discriminatory or penal treatment covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described. In all these respects, the words would cover measures which, though not discriminatory or penal in form, would be so in fact."⁴

These recommendations have been adopted in the Paras XIII and XIV in the Instrument of Instructions to the Governor-General.

There is no hoodwinking the fact that Indian opinion is strongly against these provisions, though sensible Indians do not want to be unjust or unfair to

Discrimination against British Imports

J. P. C.'s observations

Instrument of Instructions

British trading interests. Indians want to become masters in their own home and want to acquire complete control over the economic policy of the country so that they may advance India economically for the benefit of the masses. They suspect that safeguards are calculated to establish the control of the White Hall or the City of London over the economic policy of India. It is, however, to be hoped that these fears will prove baseless and this Special Responsibility will not be interpreted too narrowly in order to avoid conflict with Indian Ministers who are bound to work for the economic development of India. But in the words of Prof. Keith, "the task set, of course, is very serious, for it must always be possible to argue that a measure is intended to further Indian economic interests even if it injures British economic interests."

Sub-section (g) relates to Indian States and their Rulers.

According to the J. P. C. " this special responsibility only applies where there is a conflict between rights arising under the Constitution Act and those enjoyed by a State outside the Federal sphere. It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States ; but his special responsibility must necessarily arise in the first capacity only, his action in the second capacity being untouched in any way by the Constitution Act."† In paragraph XV of the Draft Instrument of Instructions, it is laid down :—" Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects."

It will be noted that this Responsibility refers to rights recognised in the past, as well as those which will be recognised in the future, but outside the sphere that have been acceded to the Federation. It should also be noted that the procedure for the determination of the right in case of a dispute rests with the Crown's Representative for the conduct of relations with the States and not with the Federal Judiciary.

Sub-section (c) makes it plain that the Governor-General is free to exercise his own judgment in any

Indian opinion regarding these safeguards

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† Para 171.

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J.P.C.'s
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of Instruc-
tions

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†Para 171.

The Governor-General to decide Individual Judgment or Discretion

of the Reserved Departments, even though it arises primarily within the ministerial sphere. It has also been made clear* that if any question arises whether a particular matter is a matter with respect to which he is required to act *in his discretion* or exercise *his individual judgment*, the decision of the Governor-General shall be final. Thus the authority of the Governor-General in this sphere is supreme and unfettered and his decision cannot be challenged in India even if it is wrong. No reference is permissible under the circumstances to the Federal Court.

The Governor-General to obey Secretary of State's Directions

Responsibility to the Secretary of State and the British Parliament.—If the Governor-General is not responsible to the Indian Legislature in the Reserved sphere and the sphere of Special Responsibilities, he must be responsible to some one. It is here that the Secretary of State for India, who himself is responsible to the British Parliament, comes in the picture. It is laid down in the Act† that in so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of the Secretary of State and shall comply with such particular directions, as may from time to time be issued by him. But the validity of anything done by the Governor-General cannot be called in question on the ground that it was done otherwise than in accordance with this provision.

The Secretary of State is required before giving any directions to the Governor-General to satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty. Thus the most important part of the administration has been placed under British control through the Secretary of State‡.

*Sec. 9, (3). †Sec 14.

‡Also refer to the Chapter on the Home Government.

CHAPTER IV.

THE FEDERAL EXECUTIVE—(Continued.)

The Council of Ministers ; the working of the Federal Government ; Special Powers of the Governor-General ; Governor-General's other Powers ; Position of the Governor-General ; the Instrument of Instructions to the Governor-General.

The Council of Ministers—To aid and advise the Governor-General in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion, there shall be a Council of Ministers.* These Ministers shall be chosen and summoned by the Governor-General, shall be sworn as members of the Council, and shall hold office during his pleasure.† To ensure that the Ministers are chosen from among the members of the Federal Legislature, it is laid down that a Minister who for any period of six consecutive months is not a member of either Chamber of the Federal Legislature shall at the expiration of that period cease to be a Minister.‡ The salaries of the Ministers shall be determined from time to time by the Federal Legislature by Act, but until that is done, they shall be determined by the Governor-General. The salary of a Minister shall not be varied during his term of office. No court is empowered to enquire whether any and, if so, what advice was given by the Ministers to the Governor-General.|| The functions of the Governor-General with respect to the choosing and summoning and the dismissal of Ministers, and with respect to the determination of their salaries, shall be exercised by him *in his discretion*. It is also provided|| that this shall not be construed as preventing the Governor-General from exercising *his individual judgment* in any case where by or under this Act he is required to do so.

Selection and
Appointment

Salaries

*Sec. 9 (1).
§Sec. 10 (3).

†Sec. 10 (1).
||Sec. 10 (4).

‡Sec. 10 (2).
¶Sec. 9 (1).

Joint and Collective Responsibility of the Council of Ministers

It will be noticed here that not a word has been said in the Act regarding the joint and collective responsibility of the Council of Ministers, and that the latter should enjoy the confidence of the Legislature. As far as the Act is concerned this is not necessary and everything in this connection depends on the discretion of the Governor-General. Again, while in the Government of India Act, 1919, there is a provision which requires the Governor to be "guided by" the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion, the Government of India Act, 1935, provides that the Governor and for the matter of that, the Governor-General, shall be aided and advised by his Ministers in the exercise of his functions except in so far as he is by the Act required to act in his discretion. In actual practice the difference may prove insignificant, yet "the omission of the word "guided" is likely to blur the reality of ministerial responsibility and influence."

The J. P. C. recommended that the development of responsible government should be brought about through the Instrument of Instructions to the Governor-General and the Governors. They observed :

"The Instrument will direct him (the Governor-General) to appoint as his Ministers those persons who will best be in a position collectively to command the confidence of the Legislature." It is, therefore, laid down in Para VIII of the Instrument of Instructions to the Governor-General as follows : "In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint these persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."

Thus it shall be seen that although it is intended to develop responsible government in the Federal sphere within the defined limit of the transferred departments, yet nothing has been said in the Act itself, leaving this to happen through the Instrument of Instructions to the Governor-General. When it is remembered that no judicial notice can be taken of the Instrument of Instructions, it will be realized that everything in this connection, will depend upon the Governor-General himself. If he deems fit, he

The Provision in the Instrument of Instructions

Minority Governments

may have a minority government in power. In doing that, it seems he will not be acting against any specific provision of the Act, but he will certainly be offending against the spirit in which the Act is intended to be administered in conjunction with the Instrument of Instructions.

An analogous position developed when the Congress Parties refused to assume the responsibilities of office in the Provinces where they were in majority in the Provincial Legislatures. The Governors, in order to get the government going, hit upon the device of appointing *Interim Ministries*. Different opinions were expressed regarding the legality or otherwise of the appointment of these Ministries. The correct position seems to be that these Ministries which did not manifestly command the majority of votes in the Legislature, were not exactly illegal as far as the Act was concerned. The Act gives unfettered discretion to the Governor-General, and for the matter of that to the Governors, regarding the appointment and dismissal of their Ministers. They can also include non-members of the Legislatures in the Ministries provided they occupy that position for six months only. But, if as Sir Harry Haig once said, the Instrument of Instructions is the constitutional key to the Government of India Act, the appointment of *Interim Ministries* supported by minority parties was certainly against the spirit of the Act taken in conjunction with the Instrument of Instructions.

Interim
Ministries

The working of the Federal Government. All executive action of the Federal Government is to be expressed in the name of the Governor-General; and the validity of an order or instrument which is authenticated under rules made by him cannot be called in question on the ground that it is not an order or instrument made or executed by him. The latter is to make rules for the more convenient transaction of the business of the Federal Government and also for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor-General is by or under this Act required to act in his discretion. It will be noticed here that the power for making rules for the allocation of business among the Ministers is vested in the Governor-General rather than in the Prime Minister. These rules are to include provisions requiring the Ministers and the Secretaries to the Government to transmit to the

Action to
run in the
Governor-
General's
name

Rules to be
made by the
Governor-
General

Provision
for obtaining
information
from
official
subordi-
nates

Governor-General all such information, with respect to the business of the Federal Government as may be specified in the rules, or as the Governor-General may otherwise require to be so transmitted. In particular a Minister may be required to bring to the notice of the Governor-General and the appropriate Secretary to bring to the notice of the Minister concerned and of the Governor-General, any matter under consideration by him which involves, or appears to him likely to involve, any Special Responsibility of the Governor-General.* The Governor-General is to perform the above-mentioned functions *in his discretion* after consultation with his Ministers.

Indian
opinion

In India exception is particularly taken to the provision to obtain information, if necessary, over the heads of the Ministers, from their official subordinates. This is likely to weaken the sense of discipline among the high-placed public officers who may be tempted to look to the Governors or the Governor-General as a sort of a court of appeal and their real chief rather than the Ministers. This along with the Special Responsibility regarding Services may cause great mischief. According to Prof. Shah : " But it is equally true that in India, members of the Permanent Public Service have made no secret of their hostility to the evolution of constitutionalism; and, consequently, it is not too much to assume that, for years to come, high-placed public officers, especially of non-Indian birth, may be unwilling to submit themselves in loyal co-operation with their official chiefs. It is equally to be feared that when such cases of tacit refusal to collaborate with the Ministers become rank insubordination, and Ministers propose to punish them accordingly, these public servants would take shelter under the 'special responsibility of the Governor in their behalf. This does not bode well for the efficiency or the success of responsible Ministers in the provincial governments of India."† This would apply *mutatis mutandis* to the Federal sphere. This fear may not materialise in that sphere if the Services co-operate loyally with the Indian Ministers, as they are doing in the Provincial sphere.

Reserved
and
Transferred
Spheres

In order to understand the working of the Federal Executive, it should be clearly understood that the functions of the Federal Executive have been divided mainly in two sections, the Reserved and the Transferred.

The *Reserved* section will be under the control of the Governor-General who can appoint not more than three Counsellors and special secretariat staff to help him in discharge of his functions in this sphere, which is to be done *at his discretion*. The *Transferred* section is to be managed by the Governor-General with 'the aid and advice' of his Ministers. In this sphere, too, he has his Special Responsibilities where he may exercise *his individual judgement* even against the advice of his Ministers. This is the position as far as the Act is concerned; but this does not give us the true idea as to how the whole thing is intended to work. For that we must refer to the J. P. C. and the Draft Instrument of Instructions to the Governor-General. Regarding the relations between the Counsellors in charge of the Reserved Departments and the Ministers in charge of the Transferred Departments, the J. P. C. observed :

"The Federal Government will be a dyarchical, and not a unitary, government, the Governor-General's Ministers having the constitutional right to tender advice to him on the administration of a part only of the affairs of the Federation, while the administration of the other part remains the exclusive responsibility of the Governor-General himself. In these circumstances it is clear that the Governor-General's Counsellors, who will be responsible to the Governor-General alone and will share none of the responsibility of the Federal Ministers to the Federal Legislature, cannot be members of the Council of Ministers..... We hope nevertheless that the Counsellors, even if they cannot share the responsibility of Ministers, will be freely admitted to their deliberations—and indeed that there will be free resort by both parties to mutual consultation. It would indeed be difficult, if not impossible, to conduct the administration of the Department of Defence in complete aloofness from other Departments of government; and the maintenance of close and friendly relations with Departments under the control of Minister's can only increase its efficiency. We understand the intention of His Majesty's Government to be that the principle of joint deliberation shall be recognised and encouraged by the Governor-General's Instrument of Instructions. We warmly approve the principle, and we think that it will prove a valuable addition to the machinery of government, without derogating in any way from the personal responsibility of the Governor-General for the administration of the Reserved Departments." In pursuance of the above the following is included in the Draft Instrument of Instructions to the Governor-General :— "Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is our will and pleasure that our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and the Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that our Governor-General should have regard to this instruction in his administration

J. P. C.'s
observations

Provision in
the
Instrument
of Instruc-
tions

of the Department of Defence ; and notably that he shall bear in mind desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India."*

Working
of the
Special
Responsibili-
ties

The other question that arises within the Transferred sphere is that of Special Responsibilities of the Governor-General and in the Provincial sphere that of the Governor. As has been said before the field of Special Responsibility permeates the whole administration and it may emerge anywhere and at any time. In the words of Prof. Keith, " too narrowly interpreted responsibilities might destroy the possibility of responsibility " ; but this is not the intention of the framers of the Act. The J. P. C. observed :—

" We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion that a question relating to that matter comes up for decision, the decision is to be that of the Governor to the exclusion of his Ministers. In no sense does it define a sphere from which the action of Ministers is excluded. In our view it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it if in his own unfettered judgment he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence....."†

J. P. C.'s
views

Presumably this also applies to the Governor-General and his "Special Responsibilities." Para 26 of the Introduction to the White Paper contains the following explanation :—

" In the first place it should be made clear that unless and until the Governor-General feels called upon to differ from his Ministers, in the discharge of a special responsibility, the responsibility of Ministers for the matters committed to their charge remains complete. To take a concrete instance, it will clearly be the duty of the Ministers rather than of the Governor-General himself, to ensure that the administration of their departments is so conducted that minorities are not subjected to unfair or prejudicial treatment. The intention of attributing to the Governor-General a special responsibility for the protection of the minorities is to enable him, in any case where he regards the proposals of the Minister-in-charge as likely to be unfair or prejudicial to a particular minority, in the last resort to inform the Minister concerned (or the Ministers as a body if they support their colleague) that he will be unable to accept the advice tendered to him. Nor is it contemplated that the Governor-General having been vested with "special responsibilities" of the kind indicated, will find it necessary to be constantly overruling his Minister's advice. The proposals (in the White Paper) are made on the basic assumption that every endeavour will be made by those responsible for working the Constitution to approach the administrative problems which will present themselves, in the spirit

White
Paper's
Explanation

of partners in a common enterprise. In the great bulk of cases, therefore, in day-to-day administration where questions might arise affecting the Governor-General's "special responsibilities," mutual consultation should result in agreement, so that no question would arise of bringing into play the Governor-General's powers in connection with his special responsibilities."

It should be noticed here that the theory of partnership is not accepted by some influential political parties in India. In the absence of goodwill, vagueness regarding the extent and nature of the Special Responsibilities can provide many occasions for constitutional deadlocks. Regarding the way in which these 'Special Responsibilities' are to be worked, the Secretary of State stated before the J. P. C. as follows :—

"What I imagine, any how what I hope will happen, will be that the two sides of the Government will work closely and sympathetically together, that, year by year the Governor-General and the Governor will have less and less reason to intervene in the field of special responsibilities, owing to the fact that the Ministers themselves will be ensuring that the rights contemplated in the field of special responsibilities are safeguarded, and as in other parts of the Empire, as the Governments develop, powers of that kind fall into disuse, not because the powers are unnecessary but because the Ministers themselves carry those powers into effect; and I hope and believe that that is what is going to happen in India. In course of time, other Acts of Parliament will be necessary more to recognise a state of affairs that is in existence, than to make actually new changes."

Thus though it is hoped that these safeguards will go in course of time, yet they are there to make Ministers behave. If the Ministers do not travel on the straight road, the executive heads can set them right.

There is, however, another point to be considered in connection with Special Responsibilities. In certain exceptional cases, they may serve some useful purpose. "There may be occasions when the Minister may wish the Governor-General to act. Agitation may occur on an issue about which the ministerial party may hold a strong opinion, and the Governor may be expected to take an independent and strong line of his own for the maintenance of law and order. The Ministers may be placed in a delicate position by the strong views of their party, and may welcome such an action, as it may extricate them from a difficult position. Probably this happened regarding the Palestine question in the Punjab Assembly.* On the other hand, it may seriously impinge upon the Minister's power or programme, and in the latter case he will have no other alternative but to resign." To sum up, it may be stated

The
Secretary of
State's Hope

Special
Respon-si-
bilities
may serve
useful
purpose

*A similar position has recently developed in Sind where the Ministers and the Governor are in agreement on the question of the introduction of revised assessment in the Barrage area, while the parties disagree.

Position
summed
up

that the Special Responsibilities of the Governor-General do not imply any special department ; they can arise anywhere, and when they arise the Governor-General is authorised to take action, though it is hoped that this will rarely happen and Ministers themselves will be careful regarding them. In no case, it is intended to allow the Ministers to push on the responsibility which is rightly theirs to the Governor-General or for the matter of that, to the Governor.*

Special Powers of the Governor-General—In order to enable the Governor-General to administer the Reserved Departments and to discharge his Special Responsibilities properly, he (and for the matter of that, the Governor in the Provincial spheres) has been vested with special powers in the executive, legislative, and financial spheres.

J. P. C.'s
observation

Regarding this the J. P. C. wrote : " It is plain that purely executive action may not always suffice for the due discharge of the Governor's special responsibilities ; in some circumstances it may be essential that further powers should be at his disposal. This is recognised in the White Paper, in which it is proposed to give the Governor certain legislative and financial powers. The powers which it is proposed to entrust the Governor in the event of the breakdown in the constitutional machinery may also be considered under this head." †

Governor-
General's
Acts and
Ordinances

Thus the special powers of the Governor-General include his power to issue Governor-General's Acts,‡ Emergency Ordinances§—both on his own responsibility and on the advice of the Ministers, and power to assume by Proclamation|| the functions of any Federal body or authority except the Federal Court in the case of the failure of the ordinary constitutional machinery. To these may be added the power of the Governor-General to declare by a Proclamation of Emergency that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance. In such a case the Federal Legislature has power to make laws with respect to matters enumerated in the Provincial Legislative List, but no Bill or amendment for the purposes aforesaid can be introduced or moved without the previous sanction of the Governor-General given in his discretion. This is not to be given unless it appears to the Governor-General that the provision proposed to be made is a proper provision in view of the nature of the Emergency.||

Failure of
the Con-
stitutional
machinery

Proclamation
of
Emergency

*In this connection, please refer to the Chapter on the Provincial Executive. †Para 103. ‡Sec 44. §Sec 42. ||Sec 45. ¶Sec 102. Also refer to the Chapter on 'Federal Legislature.'

Governor-General's Other Powers. The Governor-General also possesses many more ordinary and extraordinary powers. Regarding the Federal Legislature, he possesses the following powers :—

(a) Summoning from time to time the Chambers or either Chamber to meet at such time and place as he thinks fit ; proroguing the Chambers : dissolving the Federal Assembly.

Summary.

(b) He may *in his discretion* address either Chamber of the Federal Legislature or both Chambers assembled together, and for that purpose require the attendance of the members.

(c) He may *in his discretion* send messages to either Chamber of the Federal Legislature whether with respect to a Bill then pending in the Legislature or otherwise, and a Chamber to whom any message is so sent shall with all convenient dispatch consider any matter which they are required by the message to take into consideration.

(d) When the offices of the President and the Deputy-President of the Council of State may be vacant, he may *in his discretion* appoint a member of the Council to perform the duties of the vacant office.

(e) He may summon the Chambers to meet in a joint-sitting for the purpose of deliberating and voting on the Bill.

(f) When a Bill has been passed by the Chambers and presented to the Governor-General, he is to declare *in his discretion* either that he assents in His Majesty's name to the Bill, or that he withholds assent therefrom, or that he reserves the Bill for the signification of His Majesty's pleasure.

He may, however *in his discretion* return the Bill to the Chambers with a message requesting that they should reconsider the Bill or any specified provisions or amendments.

(g) To make known by public notification that His Majesty has assented to a particular Bill reserved for the signification of His Majesty's pleasure.

(h) To give consent to discussion and interpellations in the Federal Legislature on certain topics.

(i) Granting previous sanction to the introduction of certain Bills.

(j) Nominating six members to the Council of State.

(k) Certain powers with regard to the mode of filling up of the States' quota in the Central Legislature.

In the sphere of **executive action**, his powers are as under :—

(a) Choosing and summoning the Ministers.

(b) Determination of the salaries of the Ministers until the Federal Legislature determines them.

(c) Appointment of three Counsellors.

(d) Appointment and dismissal of the Financial Adviser, and the determination of his salary and allowances and the members of his staff and the conditions of their service.

(e) Appointment of an acting Chief Justice of the Federal Court.

(f) Appointment of certain members of the Railway Authority.

(g) Appointment of an Auditor of Indian Home Accounts.

(h) Certain functions regarding the staff of the Auditor of Indian Home Accounts.

(i) Exercise of certain powers with reference to the Reserve Bank such as appointment of the Governor, the Deputy Governors, nomination and removal of Directors, supersession of the Central Board, liquidation of the Bank, etc.

(j) Appointment of certain members to Tribunals appointed to settle disputes between the Railway Authority and owners of Railways in Indian States.

(k) Obtaining consultative opinions from the Federal Court.

(l) Approval of rules of the Federal Court.

(m) Prevention of commercial discrimination in legislative and executive spheres.

(n) Functions regarding the administration of Federal Acts in Indian States and the exercise of Federal authority therein.

(o) Certain functions with regard to broadcasting and interference with water supplies.

(p) Allocation of residual powers of legislation.

(q) Administration of British Baluchistan and Tribal Areas.

(r) Assignment of Income-Tax to the Provinces.

(s) Granting consent to proceedings against Civil Servants for official acts.

(t) Suspension, remission or commutation of sentences of death.

(u) Granting honours, etc.

(v) Making rules as regards each Chamber *in his discretion* after consultation with the President or the Speaker for (a) regulating the procedure of and conduct of business regarding any matter touching his functions to be discharged *in his discretion* or by his *individual judgment* : (b) prohibiting the discussion of, or the asking of questions on, any matter connected with any Indian State, other than a matter which is within the competence of the Federal Legislature.

In the **financial sphere**, the powers of the Governor-General are as under :—

(a) Causing to be laid before both Chambers of the Federal Legislature a Statement of the estimated receipts and expenditure of the Federation for every financial year. This Statement is to show separately the expenditure charged on the revenues of the Federation and the sums required to meet other expenditure which is proposed to be made from the revenues of the Federation.

(b) The decision of the question whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Federation.

(c) Directing that a demand refused or reduced by the Assembly be submitted to the Council of State in its original form.

(d) Summoning the Chambers to meet in a joint sitting for the purpose of deliberating and voting on the demand.

(e) Recommending a demand for grant.

(f) Authentication of the Schedule of Authorised Expenditure.

(g) Inclusion in the Schedule of such additional amounts, not exceeding the amount of the rejected demand or the reduction, as appears to him necessary in order to discharge his Special Responsibilities.

(h) Causing to be laid before both Chambers of the Federal Legislature a Supplementary Statement showing the estimated amount of further expenditure, if necessary.

(i) Recommending a Bill or amendment making provision for imposing or increasing any tax; or for regulating the borrowing of money or the giving of any guarantee by the Federal Government, or for amending the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government, or for declaring any expenditure to be expenditure charged on the revenues of the Federation, or for increasing the amount of any such expenditure.

Position of the Governor-General. It should now be possible to make some general observations on the position of the Governor-General under the new Constitution. It may be stated at the very outset that under the new Act, he occupies a key position in the constitutional structure. He has to perform very important and multifarious duties and functions, which in actual effect would mean that he would be the real directing force of the constitutional machine. His position is very different from that of the Governor-General of a British Dominion. While the latter is merely the titular executive of the Dominion Government and the representative of the British Crown performing functions *vis-a-vis* the Dominions which the Crown performs *vis-a-vis* Britain, the former, besides being all this, is a powerful ambassador of the Home Government and much more. He is the Viceroy as well as the real executive head with considerable powers, means, and resources to put his will into practice. As has been described above, these powers comprise "powers under the head of reserved departments, special responsibilities, special powers, powers delegated by the Crown not inconsistent with the Act, discretionary powers, emergency powers, powers of interference in the

Difference
between a
Dominion
Governor-
General
and the
Indian
Governor-
General

Special
Powers.

transferred or non-reserved departments under the elastic formula of "necessary for the fulfilment of any of the special responsibilities," powers for issuing ordinances, directing legislation by message, and providing for appropriations without the consent of the legislatures and against their votes." By virtue of these powers, the Governor-General is in the position of the cornerstone of the Indian constitutional structure. He is the super dictator in India, and can act as an autocrat if he so chooses. In the words of Mr. Winston Churchill, he is "armed with all the powers of a Hitler or Mussolini. By a stroke of the pen he could scatter the constitution, and decree any law to be passed, or martial law which was no law at all. Of all these he was the sole judge. Such a functionary was a dictator and he had a very powerful army." Even the check of the Council has been removed and the supreme powers in actual effect have been vested in him to be exercised by him *in his discretion* or by the exercise of *his individual judgment*. This has aroused widespread misgivings in India. It is said that if he chooses he can enact Governor-General's Acts, issue Ordinances, and even take control of the whole constitutional machine, thus nullifying Central Responsibility, if there is any. The terms of his Special Responsibilities are so vague and wide, that he can make his will felt anywhere and everywhere. 'Safeguarding the financial stability and credit of India' may be taken to mean the control of the currency and exchange policy of India, may be against the interests of the Indian people when they may come in clash with the British interests. 'Safeguarding the legitimate interests of the Minorities' may be made to stand in the way of the evolution of United Indian nationalism and common Indian culture, and may be used to perpetuate the vested interests of the microscopic British minority or Indian landed-interests. 'Safeguarding the legitimate rights of the members of the Public Services' may mean veering away the public servants from the Ministers to the Governor-General and to encourage indiscipline among them, which might have the effect of nullifying the schemes of the Ministers. 'The prevention of commercial discrimination' can be used to perpetuate the economic slavery of India and the appalling poverty of her teeming millions. 'The protection of the rights of the Indian States' can be used to perpetuate mediaevalism and reactionaryism in Indian States and to prevent democracy coming into its own in one-third of the country. It is, therefore,

Special
Responsi-
bilities

Powers of a
Dictator

clear that if the Governor-General is a person without any breadth of vision or any sympathy for Indian aspirations, he can stop the progress of the nation, while remaining within the four corners of the Constitution.

It is, however, not suggested that this will be so. In the words of late Mr. Ramsay MacDonald, these safeguards and special powers are to be used as a sort of safety-device against mal-administration and the breakdown of the Constitution. Used as such they are to function in the interests of India and not against her interests. The Governor-General must carry out his duties in the spirit of the Instrument of Instructions, if the Constitution is to work. Much would depend upon the Governor-General's tact, sympathy, breadth of vision, and statesmanship, as he is the pivot of the Constitution. In the words of Dr. Sir Shafaat Ahmad Khan, "His is a position of supreme responsibility, but, for that very reason, it is also a position of supreme honour and opportunity."*

Provinces

In the Provinces where the Governors are vested with similar powers by the Constitution Act, the whole position has changed as a result of an understanding between the British Government and the Congress Ministers. According to this understanding the Governors have, more or less, given the understanding not to interfere in the day-to-day working of the administration, allowing maximum liberty to the Ministers to act in respect of the whole sphere of administration, while remaining within the four corners of the Constitution. It is to be hoped that some such understanding will also be evolved in respect of the powers of the Governor-General, thus nullifying all the criticism given above. If this is done, it will be a real contribution to the development of self-government in India.

Need of an understanding on the lines of the understanding in the Provinces.

The Instrument of Instructions.— Before closing this Chapter, it is essential that something should be said about the Instrument of Instructions to the Governor-General. In the discussion in the preceding paragraphs mention has been made so many times of this Instrument. This speaks a lot about its importance. As a matter of fact, it is a very important document, through which an attempt has been made to introduce responsible government in the Federal as well as the Provincial sphere. It embodies Instructions which the Governor General and the

*The Indian Federation, page 37.

Importance

The proper use of the powers

Governors are asked to follow in their respective spheres; and it is based on 'the principles which have proved singularly successful in the working of dyarchy.' An analysis of the Instrument shows that through directions to the Governor-General, provision has been made for Responsible Ministry which should include representatives of the important minority communities as well as the States, joint consultation between the Ministers and the Counsellors, the proper exercise of special powers and discharge of Special Responsibilities, framing of rules for the regulation of the business of the Federal Government, ensuring the consultation of the Finance Minister upon any proposal which affects the finances of the Federation, consultation of the Indian Ministers in matters of defence, Indianisation of the army, or the employment of Indian troops outside India, instructions bearing on the relations between the Federation, the Provinces and the Federated States, and certain matters affecting the Legislature. Finally it concludes with the words, " And finally it is Our will and pleasure that our Governor-General should so exercise the trust which we have reposed in him that partnership between India and the United Kingdom within our Empire may be furthered to the end that India may attain its due place among Our Dominions."*

The Government of India Act, 1935, lays down that the Secretary of State shall lay before Parliament the draft of any Instrument of Instructions (including any Instrument amending or revoking an Instrument previously issued) which it is proposed to recommend His Majesty to issue to the Governor-General, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instrument may be issued.† Explaining this, the J. P. C. observed :—

" It is essential that the vital importance of the Instrument of Instructions in the evolution of the new Indian Constitution should be fully appreciated. Thus, Ministers would have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor's own discretion ; but the Governor (for the matter of that the Governor-General) could in any event, and doubtless often would, consult them before his own decision is made ; and if at some future time it seemed that this power of consultation might with safety be made mandatory and not permissive, we can see nothing inconsistent with the Act in an amendment of the Instrument of Instructions for such a purpose. But so grave are the issues involved in the evolution of the Indian Constitution that it would be neither wise nor safe to deny Parliament

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It is, however, not suggested that this will be so. In the words of late Mr. Ramsay MacDonald, these safeguards and special powers are to be used as 'a sort of safety-device against mal-administration and the breakdown of the Constitution.' Used as such they are to function in the interests of India and not against her interests. The Governor-General must carry out his duties in the spirit of the Instrument of Instructions, if the Constitution is to work. Much would depend upon the Governor General's tact, sympathy, breadth of vision, and statesmanship, as he is the pivot of the Constitution. In the words of Dr. Sir Shafaat Ahmad Khan, "His is a position of supreme responsibility, but, for that very reason, it is also a position of supreme honour and opportunity."*

In the Provinces where the Governors are vested with similar powers by the Constitution Act, the whole position has changed as a result of an understanding between the British Government and the Congress Ministers. According to this understanding the Governors have, more or less, given the understanding not to interfere in the day-to-day working of the administration, allowing maximum liberty to the Ministers to act in respect of the whole sphere of administration, while remaining within the four corners of the Constitution. It is to be hoped that some such understanding will also be evolved in respect of the powers of the Governor-General, thus nullifying all the criticism given above. If this is done, it will be a real contribution to the development of self-government in India.

The Instrument of Instructions.— Before closing this Chapter, it is essential that something should be said about the Instrument of Instructions to the Governor-General. In the discussion in the preceding paragraphs mention has been made so many times of this Instrument. This speaks a lot about its importance. As a matter of fact, it is a very important document, through which an attempt has been made to introduce responsible government in the Federal as well as the Provincial sphere. It embodies Instructions which the Governor General and the

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a voice in the determination of its progressive stages. The initiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day ; but the consequences of any action taken may be so far reaching and so difficult to foresee that Parliament, if denied a proper right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protest. For this reason we are clearly of opinion that, as the White Paper proposes, it is with Parliament that the final word should rest. We suggest as the appropriate procedure that the Crown should communicate to Parliament a draft of the proposed Instrument or of any subsequent amendments and that Parliament will if it sees fit present an Address, praying that the Instrument should issue in the form of the draft or with such modifications as are agreed by both Houses, as the case may be."*

It is further provided† that the validity of anything done by the Governor-General can not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him. This makes it clear that no judicial notice can be taken of the Instrument of Instructions as it represents the spirit rather than the letter of the Act. It provides a constitutional key to the Act.

*Para. 76. †Sec. 18 (2).

APPENDIX II

DRAFT INSTRUMENT OF INSTRUCTIONS TO THE GOVERNOR-GENERAL.

Whereas by Letters Patent bearing even date We have made effectual and permanent provision for the Office of Governor-General of India :

And Whereas by those Letters Patent and by the Act of Parliament passed on _____ and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the Government of India and of Our Federation of India are declared to be vested in the Governor-General as our Representative :

And Whereas, without prejudice to the provision in the said Act that in certain regards therein specified the Governor-General shall act according to instructions received from time to time from Our Secretary of State, and to the duty of Our Governor-General to give effect to any instructions so received, We are minded to make general provision regarding the manner in which Our said Governor-General shall execute all things which, according to the said Act and said Letters Patent, belong to his Office and to the trust which We have reposed in him :

And Whereas by the said Act it is provided that the draft of any such instructions to be issued to Our Governor-General shall be laid by Our Secretary of State before both Houses of Parliament :

And Whereas both Houses of Parliament, having considered the draft laid before them accordingly, have presented to Us an Address praying that Instructions may be issued to Our Governor-General in the term which hereinafter follows :

Now therefore We do by these Our Instructions under our Sign Manual and Signet declare Our pleasure to be as follows :—

A.—Introductory.

I. Under these Our instructions, unless the context otherwise require, the term "Governor-General" shall include every person for the time being administering the Office of Governor-General according to the provisions of Our Letters Patent constituting the said Office.

II. Our Governor-General for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual, appointing him, to be read and published in the presence of the Chief Justice of India for the time being, or, in his absence, other Judge of the Federal Court.

III. Our said Governor-General shall take the oath of allegiance and the oath for the due execution of the Office of our Governor-General of India, and for the due and impartial administration of justice, in the form hereto appended, which oaths the Chief Justice of India for the time being, or in his absence any Judge of the Federal Court, shall, and is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor-General, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers, the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service and to the security of India by the absence of Our Governor-General, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—In Regard to the Executive Authority of the Federation.

VII. Our Governor-General shall do all that in him lies to maintain standards of good administration ; to encourage religious toleration, co-operation and goodwill among all classes and creeds ; and to promote all measures making for moral, social and economic welfare.

VIII. In making appointments to his Council of Ministers Our Governor-General shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is most likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable representatives of the Federated States and members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Federation, save in respect of those functions which he is required by the said Act to exercise in his discretion, Our Governor-General shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment ; in any of which cases Our Governor-General shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. It is Our will and pleasure that in the discharge of his special responsibility for safeguarding the financial stability and credit of the Federation Our Governor-General shall in particular make it his duty to see that a budgetary or borrowing policy is not pursued which would, in his judgment, seriously prejudice the credit of India in the money markets of the world, or affect the capacity of the Federation duly to discharge its financial obligations.

XI. Our Governor-General shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Federal Legislature, and those classes who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare on joint political action in the Federal Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor-General shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and he shall be guided in this regard by the accepted policy prevailing before the issue of these Our Instructions, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

XII. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor-General shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XIII. The special responsibility of Our Governor-General for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIV. In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their own fiscal and economic policy, or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions; and he should intervene in tariff policy or in the negotiation of tariff agreements only if in his opinion the main intention of the policy contemplated is by trade restrictions to injure the interests of the United Kingdom rather than to further the economic interests of India. And We require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products: and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention, to measures which, though not discriminatory or penal in form, would be so in fact.

At the same time interpreting the special responsibility to which this paragraph relates, Our Governor-General shall bear always in mind the partnership between India and the United Kingdom within Our Empire, which has so long subsisted, and the mutual obligations which arise therefrom.

XV. Our Governor-General shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Federal Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised,* whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter in respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects.

XVI. In the framing of rules for the regulation of the business of the Federal Government Our Governor-General shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Federation: and further that no re-appropriation within a Grant shall be made by any Minister otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal, the matter shall be brought for decision before the Council of Ministers.

XVII. Although it is provided in the said Act that the Governor-General shall exercise his functions in part in his discretion and in part with the aid and advice of Ministers, nevertheless it is Our will and pleasure that Our Governor-General shall encourage the practice of joint consultation between himself, his Counsellors and his Ministers. And seeing that the Defence of India must to an increasing extent be the concern of the Indian people it is Our will in especial that Our Governor-General should have regard to this instruction in his administration of the Department of Defence; and notably that he shall bear in mind desirability of ascertaining the views of his Ministers when he shall have occasion to consider matters relating to the general policy of appointing Indian Officers to Our Indian Forces, or the employment of Our Indian Forces on service outside India.

XVIII. Further it is Our will and pleasure that in the administration of the Department of Defence Our Governor-General shall obtain the views of Our Commander-in-Chief in any matter which will affect the discharge of the latter's duties and shall transmit his opinion to Our Secretary of State whenever the Commander-in-Chief may so request on any occasion when Our Governor-General communicates with Our Secretary of State upon them.

XIX. And We desire that, although the financial control of Defence administration must be exercised by the Governor-General at his discretion, nevertheless the Federal Department of Finance shall be kept in close touch with this control by such arrangement as may prove feasible, and that the Federal Ministry and, in particular, the Finance Minister shall be brought into

*The procedure for the determination of the right in case of a dispute rests with the Crown's representative for the conduct of relations with the States

consultation before estimates of proposed expenditure for the service of Defence are settled and laid before the Federal Legislature.

C.—In regard to Relations between the Federation, Provinces and Federated States.

XX. Whereas it is expedient, for the common good of Provinces and Federated States alike, that the authority of the Federal Government and Legislature in those matters which are by law assigned to them should prevail :

And whereas at the same time it is the purpose of the said Act that on the one hand the Governments and Legislatures of the Provinces should be free in their own sphere to pursue their own policies, and on the other hand that the sovereignty of the Federated States should remain unaffected save in so far as the Rulers thereof have otherwise agreed by their Instruments of Accession :

And whereas in the interest of the harmonious co-operation of the several members of the body politic the said Act has empowered Our Governor-General to exercise at his discretion certain powers affecting the relations between the Federation and Provinces and States :

It is Our will and pleasure that Our Governor-General, in the exercise of these powers, should give unbiased consideration as well to the views of the Governments of Provinces and Federated States as to those of his own Ministers, whenever those views are in conflict and, in particular, when it falls to him to exercise his power to issue orders to the Governor of a Province, or directions to the Ruler of a Federated State, for the purpose of securing that the executive authority of the Federation is not impeded or prejudiced, or his power to determine whether provincial law or federal law shall regulate a matter in the sphere in which both Legislatures have power to make laws.

XXI. It is Our desire that Our Governor-General shall by all reasonable means encourage consultation with a view to common action between the Federation, Provinces and Federated States. It is further Our will and pleasure that Our Governor-General shall endeavour to secure the co-operation of the Governments of Provinces and Federated States in the maintenance of such federal agencies and institutions for research as may serve to assist the conduct by Provincial Governments and Federated States of their own affairs.

XXII. In particular We require Our Governor-General to ascertain by the method which appears to him best suited to the circumstances of each case the views of Provinces and of Federated States upon any legislative proposals which it is proposed to introduce in the Federal Legislature for the imposition of taxes in which Provinces or Federated States are interested.

XXIII. Before granting his previous sanction to the introduction of a Bill into the Federal Legislature imposing a Federal surcharge on taxes on income, Our Governor-General shall satisfy himself that the results of all practicable economies and of all practicable measures for increasing the yield accruing to the Federation from other sources of taxation within the powers of the Federal Legislature would be inadequate to balance Federal receipts

and expenditure on revenue account ; and among the aforesaid measures shall be included the exercise of any powers vested in him in relation to the amount of the sum retained by the Federation out of money, assigned to the Provinces from taxes on income.

XXIV. Our Governor-General, in determining whether the Federation would or would not be justified in refusing to make a loan to a Province, or to give a guarantee in respect of a loan to be raised by a Province, or in imposing any conditions in relation to such loan or guarantee, shall be guided by the general policy of the Federation for the time being as to the extent to which it is desirable that borrowings on behalf of the Provinces should be undertaken by the Federation ; but such general policy shall not in any event be deemed to prevail against the grant by the Federation of a loan to a Province or a guarantee in respect of a loan to be raised by that Province, if in the opinion of Our Governor-General a temporary financial emergency of a grave character has arisen in a Province, in which refusal by the Federation of such a grant or guarantee would leave the Province with no satisfactory means of meeting such temporary emergency.

XXV. Before granting his previous sanction to the introduction into the Federal Legislature of any Bill or amendment wherein it is proposed to authorise the Federal Government to give directions to a Province as to the carrying into execution in that Province of any Act of the Federal Legislature relating to a matter specified in Part II of the Concurrent Legislative List appended to the said Act, it is Our will and pleasure that Our Governor-General should take care to see that the Governments of the Provinces which would be affected by any such measure have been duly consulted upon the proposal and upon any other proposals which may be contained in any such measure for the imposition of expenditure upon the revenues of the Provinces.

XXVI. In considering whether he shall give his assent to any Provincial law relating to a matter enumerated in the Concurrent Legislative List, which has been reserved for his consideration on the ground that it contains provisions repugnant to the provisions of a Federal law, Our Governor-General, while giving full consideration to the proposals of the Provincial Legislature, shall have due regard to the importance of preserving substantially the broad principles of those codes of law through which uniformity of legislation has hitherto been secured.

D.—Matters affecting the Legislature.

XXVII. Our Governor-General shall not assent in Our name to, but shall reserve for the signification of our pleasure, any Bill of any of the classes herein specified, that is to say :—

- (a) any Bill the provisions of which would repeal or be repugnant to provisions of any Act of Parliament extending to British India ;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill ;
- (c) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement ;

(d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III, Part V of the said Act.

XXVIII. It is further Our will and pleasure that if an Agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor-General in notifying his assent in Our name to any Act of the Legislature of the Central Provinces and Berar which has been reserved for his consideration, shall declare that his assent to the Act in its application to Berar has been given on Our behalf and in virtue of the provisions of Part III of the said Act in pursuance of the Agreement between Us and His Exalted Highness the Nizam.

XXIX. It is Our will that the power vested by the said Act in Our Governor-General to stay proceedings upon a Bill, clause or amendment in the Federal Legislature in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XXX. It is Our will and pleasure that in choosing the representatives of British India for seats in the Council of State which are to be filled by Our Governor-General by nominations made in his discretion, he shall, so far as may be, redress inequalities of representation which may have resulted from election. He shall, in particular, bear in mind the necessity of securing representation for the Scheduled Castes and women; and in any nominations made for the purpose of redressing inequalities in relation to minority communities (not being communities to whom seats are specifically allotted in the Table in the First Part of the First Schedule to the said Act) he shall so far as seems to him just be guided by the proportion of seats allotted to such minority communities among British India representatives of the Federal Assembly.

E.—General

XXXI. And finally, it is Our will and pleasure that our Governor-General should so exercise the trust which we have reposed in him that partnership between India and the United Kingdom within our Empire may be furthered, to the end that India may attain its due place among Our Dominions.

CHAPTER V

THE FEDERAL LEGISLATURE.

Bicameral Legislature; Constitution of the Legislature; the Council of State; The Federal Assembly; Direct vs. Indirect Election; Officers of the Chambers; General Qualifications of Members; General Disqualifications of Members; General Provisions regarding the Legislature; Privileges of the Members; Position of the Counsellors, the Ministers and the Advocate General; Powers and Functions of the Federal Legislature.

Bicameral Legislature. The Federal Legislature shall consist of His Majesty the King, represented by the Governor-General, and two Chambers, to be known as the Council of State and the House of Assembly, which will also be called the Federal Assembly.*

Constitution of the Legislature: The Council of State. The Council of State shall be a permanent body not subject to dissolution.† It shall consist of one hundred and fifty-six representatives of British India, and not more than one hundred and four representatives of the Indian States. One-third of these members shall retire every third year in accordance with the provisions contained in the First Schedule to the Act. The latter provides that one-third of the persons first chosen shall be chosen to serve for three years only, one-third shall be chosen for six years only and one-third shall be chosen to serve for nine years. Then in every third year members shall be chosen for nine years. The members for British India are to be directly elected with the exception of six members, who are to be nominated by the Governor-General with the purpose of securing representation for the minority communities, women, and the Depressed Classes. Out of the seats to be filled from British India, forty-nine seats are reserved for Muslims, four for Sikhs, six for Scheduled Castes and seventy-five as General Seats. The Europeans have been given seven seats, Indian Christians have been given two, and the Anglo-Indians have been given

*See. 18 (1). † Sec 18 (4).

one. The seats, reserved as General Seats and reserved for the Sikhs and the Muslims, are to be filled in by direct election in territorial constituencies by communal electorates, while those of Europeans, Indian Christians and Anglo-Indians are to be filled up as a result of indirect election by members of the electoral colleges composed of the members of the Provincial Legislatures belonging to these communities. The Scheduled Caste seats allotted to the Provinces shall be filled up by members of these castes chosen by the members of the Assembly, or the Assembly and the Council as the case may be, of the respective Provinces. Seats allotted to women in any Province shall be filled by women chosen by persons whether men or women, who hold seats in the Chamber or, as the case may be, the Chambers of the Legislature of that Province. These seats have been distributed among the various Provinces of British India as under:—

Madras—20; Bombay—16; Bengal—20; United Provinces—20; Punjab—16; Bihar—16; Central Provinces and Berar—8; Assam—5; North-West Frontier Province—5; Orissa—5; Sind—5; British Baluchistan—1; Delhi—1; Ajmer-Merwara—1; Coorg—1; Anglo-Indian—1; Europeans—7; Indian Christian—2. Total—150.

These seats have been divided among the communities as under:—

General Seats—75; Seats for the Scheduled Castes—6; Sikh Seats—4; Mohammadan Seats—49; Women Seats—6; Anglo-Indian—1; Europeans—7; Indian Christians—2.

Out of the sixteen seats allotted to the Punjab, three are General Seats, four are Sikh Seats, eight Mohammadan Seats, and one Woman Seat.

The representatives of the States are to be nominated by their rulers. These seats have been allocated among the States with regard to their dynastic status, salutes, and importance. The First Schedule to the Act gives the details regarding the seats which can be filled in by the various States if they agree to join the Federation. According to this Schedule, Hyderabad has been assigned five seats, Mysore three, Kashmir three, Gwalior three, Baroda three,

The Seats allotted to the Indian States.

Patiala two, Bhawalpur two; while smaller States have been assigned less seats. Some States are joined in groups for the purpose of representation. Thus it is clear that the Council of State is composed of two kinds of members—representing British Indian people and representing the Indian Princes, or in other words “members who speak for a limited electorate, and members for expressing the views of an autocratic prince.” The representation in this Chamber is limited to the vested interests recognized on communal lines and to the rulers of the Indian States.

The Federal Assembly. The Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States. The seats allotted to British India have been distributed among the Provinces community-wise. Of these one hundred and five are General Seats including nineteen Scheduled Castes' Seats, eighty-two are reserved for Muhammadans, six for Sikhs, four for Anglo-Indians, eight for Europeans, eight for Indian Christians, eleven for representatives of Commerce and Industrial interests, ten for representatives of Labour, seven for Land-holders and nine for the representatives of Women. They have been distributed among the Provinces as under:—

British
Indian
Seats.

Madras	...	37	N. W. F. Province	5
Bombay	...	30	Orissa	5
Bengal	...	37	Sind	5
United Provinces	37		British Baluchistan	1
Punjab	...	30	Delhi	2
Bihar	...	30	Ajmer-Merwara	1
C. P. and Berar	...	15	Coorg	1
Assam	...	10	Non-Provincial Seats	4
				— —
			Total	250

Out of the 30 seats assigned to the Punjab, six seats are General Seats, one of these being a Scheduled Caste Seat, six are Sikh Seats, fourteen are Muhammadan Seats, one European Seat, one Indian Christian

Seat, one Land-holders' Seat, one Labour Seat, and one Woman Seat.

The members from British India are to be chosen through a system of indirect election. The General Seats, the Sikh Seats and the Muhammadan Seats allotted to a Governor's Province shall be filled in by election by members of the Provincial Assembly belonging to the respective communities in accordance with the principle of proportional representation by means of the single transferable vote. It is, however, provided that the holders of Sikh Seats in the North West Frontier Province and the Seats reserved for representatives of Backward Areas or Backward Tribes in any Province shall be considered General Seats for the purpose of election.

Method of Election.

It is further laid down regarding the election of the representatives of the Scheduled Castes that the persons selected as eligible candidates at the primary elections for the Provincial Legislative Assembly shall constitute an electoral college for the purpose of choosing four candidates for each Seat. Out of these four candidates for each Seat one will be elected by the General electorate. Women Seats in the Federal Assembly allotted to a Province shall be filled up by election by an electoral college consisting of the women members of the Provincial Assembly. Representatives of the Europeans, Indian Christians, and the Anglo-Indians are also to be elected by electoral colleges constituted by members of the Provincial Assemblies belonging to these communities. The four Non-Provincial Seats are to be filled up by the Federated Chambers of Commerce, the Associated Chambers of Commerce, some other commercial bodies in Northern India and the labour organisations respectively.

The Seats allotted to the individual Indian States are roughly proportionate to their population. Hyderabad with a population of 14,436,148 has been given sixteen seats; Mysore with a population of 6,557,302 has been given seven seats; Kashmir with a population of 3,646,243 has been given four seats; Gwalior with a population of 3,523,070 has been given four seats; Patiala with a population of 1,625,520 has been given two seats; and Bahawalpur with a population of 984,612 has been given one seat. Other States have also been assigned seats according to their population. The representatives of the States are to

Seats allotted to the Indian States.

be appointed by the Rulers of the States as provided in the First Schedule to the Act. The total number of members representing the States in both the Houses of Legislature will depend on the number of States joining the Federation.

Unlike the Council of State, the Federal Assembly, unless sooner dissolved, shall continue for five years and the expiration of this period shall operate as a dissolution of the Assembly.†

It will be noticed from the above that the future Federal Legislature will be bicameral. This is in accordance with the constitutional practice of Federal Constitutions in other countries. One of the Chambers will represent the people directly, while the other Chamber will represent Provincial Assemblies. In the case of India the usual course has been reversed, as the Upper House or the Council of State will be directly elected by the people, while the Lower House or the Federal Assembly will be elected indirectly by the members of the Provincial Legislatures. The size of the Houses has also been increased considerably with the idea of giving adequate representation to the minorities, the special interests, and the Indian States, particularly the smaller Indian States. The size of the Lower Chamber is substantially larger than that of the Upper Chamber. The distribution of seats among the various communities in British India is not based on any logical principle. The Europeans have been given more than they deserved on the population basis. The Muslims who are nearly sixty-six and a half millions have been assigned eighty-two seats in the Federal Assembly as compared with one hundred and five General Seats meant for the communities numbering nearly 144 millions. The Muslim claim for thirty-three per cent seats in the Federal Legislature has thus been conceded. In this way the Hindus, who form a majority of the population in the country, have been converted into a minority in the House. The States have also been assigned more seats than they can claim on the basis of population. Their representation constitutes 40 per cent of the total strength in the Council of State and 33 per cent of the total strength in the Assembly, though their population is about one-third of British India excluding Burma.

†Sec. 18 (5).

Objection has been taken to this by progressive public opinion in India as it means paying a high price for buying up the consent of the Princes to join the Federation. It also means that the conservative forces in the Legislature as represented by the nominees of the Princes in the persons of the States' representatives will be strengthened. It is feared that this States' *bloc* is intended to play the part of the present nominated and official *bloc* in the Central Legislature so as to obstruct the political advancement of British India.

In the words of Mr. K. T. Shah, "...disproportionate weightage is given to the States,—or rather the Princes,—joining the Federation in the Federal Legislature—most likely because British Imperialism must pay this price, at the expense of British India, to secure the adhesion of those reactionary elements in India which they conceive to be the best guarantee for the maintenance of British domination and of the British vested interests in India. It is not the only irony in the situation that this is alleged to have been necessary in order to concede 'responsibility at the centre' in the new Constitution of India."*

Even the London "Times" wrote :

"The Congress Party and many Muslim leaders feel an intense dislike at the prospect of being faced in the Central Legislature by a powerful block one third of the Lower House and two-fifth of the Upper House of what they call 'place nominees'. It must be admitted that, if the States remain as they are, these ultra conservative elements may become dead weight rather than a stabilising force at the centre of the Federation."† As opposed to this view which is generally speaking the view of the Congress and other progressive parties, Bhai Parmanand, the Senior Vice-President of the Hindu Maha Sabha declared in a Press interview :

"I should not mind if in the beginning the Princes send their nominees and not elected members, as I feel that these distinctions are bound to disappear in a very short time."‡

It may, however, be stated here that although there is much in the fear that the States' representatives will retard the progress of British India as the States are politically and intellectually backward, yet it is to be hoped that the States *bloc* will not always play that part, as the States are bound to get enlightened by their contact with British India. Moreover, it has been suggested that the Indian Princes should set up some sort of constitutional governments in the States and also that they should allow the States' representatives to be elected by the people of the States rather

London
"Times"
view.

Bhai Parma-
nand's view

*Shah, K. T.: Federal Structure, page 286.

†Quoted by Mr. Satyamurthi in Tribune, Nov. 4, 1938.

‡Tribune, October 17, 1938.

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Direct versus Indirect Election It has been stated above that a system of direct election has been adopted for the Upper House, while a system of indirect election has been adopted for the Lower House. This is against the general practice. As a matter of fact the Joint Committee on Indian Constitutional Reforms had recommended indirect election both for the Council of State and the Federal Assembly. As the result of strong public demand the British Government substituted the system of direct election to the Council of State. This is certainly "a peculiar position in which an Upper House elected on a very restricted franchise should be the sole vehicle of what is generally considered the democratic force of direct election. Judged by pure political theory the system is topsy-turvy." Public opinion in India is definitely against indirect election for the Lower House. Although the Joint Parliamentary Committee was aware of this, yet it recommended otherwise, thus reverting the proposal of the White Paper.* It stated:—

"Direct election has the support of the Indian opinion and is strongly advocated by the British India delegation in their Joint Memorandum. It has been the system in India for the last twelve years, and has worked on the whole reasonably well, though it should be remembered, with a much more limited franchise than that."

The Committee thought that the size of the constituencies in India would be unwieldy and unmanageable unless the number of seats is increased beyond all reasonable limits. It pointed out that any considerable extension of the franchise under a system of direct election would cause an inevitable break-down. Moreover it considered it essential that there should be close and intimate contact between a representative and his electors which will not be possible when the constituencies are very wide and the number of electors very large. Lastly it will be easier in future to pass from the indirect to the direct system of election should that be found necessary; while the introduction and extension of the system of direct election at the present time, in the opinion of the Committee, meant committing India to a system which

*Para. 198 J. P. C. Report.

would logically lead to adult suffrage before it is practicable. In view of these arguments the Committee wrote :

" We are now recommending to Parliament the establishment of self-government in India and we regard it as fundamental that the system of election to the Central Legislature should be such as to make the responsibility of a member to those who elect him a real and effective responsibility. We do not think that this can be secured under a system of direct election proposed in the White Paper, and, though we are conscious that we are reversing the decision made by Parliament in 1919, we have come to the conclusion, notwithstanding the theoretical objections which can be urged against it, that there is no alternative to adoption of some form of indirect election."*

J. P. C.
Recomm.
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Sir Samuel Hoare also said in this connection in his Memorandum to the Committee :

" The ultimate solution may be on the lines of the group system but whatever the final solution may prove to be I am convinced that it would be easier to approach it from a system of indirect election rather than from direct."†

Sir Sam
Hoare's

Recently Bhai Parmanand, Senior Vice-President of the Hindu Maha Sabha has expressed himself in favour of indirect election. He declared in a Press interview :

Bhai P.
nand's

" Having regard to the vastness of the country and the ignorance of the common people, indirect election would prove to be a blessing in India, and those people who had the experience of fighting elections could not but sympathize with this view."‡

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Against these arguments it may be urged that with the limited extension of the franchise proposed by the Lothian Committee the problem of dealing with unmanageable numbers of electors does not arise. It has been worked out that if the Federal Assembly has two hundred and fifty members, the average number of electors in each constituency will not be more than thirty to forty thousand and the area of the constituency will be from six thousand to twelve thousand square miles. Thus these constituencies will be about one half of the present constituencies for the elections of the present Legislative Assembly. Moreover, constituencies larger and containing greater population are to be found in other countries where the system of direct election prevails. With the increasing facilities for travel in rural areas and the growth of the rapid means of communications in this country, the problem of contact between the elector and the elected is being automatically solved. There are other objections

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System adopted against general practice.

J. P. C.'s Recommendation.

Indian opinion against Indirect Election.

Unwieldy constituencies.

Danger of constitutional break-down.

No touch between the elector and the elected. Easier to pass from Indirect to Direct Election. Direct Election will lead to Adult Suffrage

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† Tribune, October 17, 1938.

Provincial
interests will
Control the
Central
legislature
and the
Ministry.

Confusing of
Provincial
and Federal
issues.

No verdict of
the country
on Federal
issues possi-
ble.

Corruption.

No party can
have a clear
majority.

Central
Government
weak and
changing.

Creation of
political
conscious-
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Touch bet
ween the
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and the voter

The Govern-
ment of
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Despatch

against the system of indirect election through the Provincial Assembly. The Provinces with their communal majorities and minorities and emphasis on provincial politics will control the Central Legislature and through it the Federal Ministry. Besides weakening the Federal Ministry and making its formation more difficult on account of the need for reconciliation of provincial interests, it will tend to confuse the provincial and federal issues. Elections will be fought only on provincial issues and thus the federal issues will suffer. Again dissolution of the Central Legislature with the idea of appealing to the country for securing its verdict on important federal issues will not be possible under the system. Further,

"The system inevitably opens the door to corruption for it means that each member of the Central Legislature, which will deal with matters vitally affecting business and finance, will be elected by a number of provincial electors on the average not more than seven or eight in number."

The system is bound to stand in the way of the growth of a national policy as it will promote provincial separatism. The system of proportional representation by means of the single transferrable vote will tend to create many groups and parties, divided mostly on provincial and communal lines, and will thus prevent any party from getting a clear majority. Thus the Central Government is bound to be weak and frequent changes are likely to take place. Under the circumstances the Federal Cabinet shall have to accommodate provincial interests and also State-interests, and therefore will be nothing better than a "fortuitous Noah's Ark". On the other hand, there is much to be said for direct election. The direct general election is admittedly a means of creating public opinion and public interest in political affairs and thus helps to create political consciousness in the country. In a politically backward country like India, the value of this thing cannot be lost sight of. Moreover, this system necessitates the approaching of the candidate to ordinary voter and thus helps to create a direct contact between the two. The Government of India Despatch also stated :—

"The Indian electorate is held together by agrarian, commercial, professional and caste relations. It is through these relations that a candidate approaches the elector, and in this way political opinion is the result partly of individual judgment, but to a greater

* Para, 203.

extent than elsewhere of group movements. These relations and groups provide in India a means of indirect contact between voter and member, reducing the obstacles which physical conditions entail. The Assembly, in part, perhaps, because it is directly elected, has appealed to the sentiment of India, and sown the seeds, as yet only quickening, of real representation."

So it may be concluded that there is no justification for changing the system to which the country is used for a number of years.

The door against direct election has, however, not been shut for all times to come. The Joint Parliamentary Committee did not seem to feel itself on very sure ground and therefore left the door open for the change if it be thought necessary in future. It wrote :

Indirect
election
open to
review

"But the discovery of the best method of adapting those ideas to India's needs, and removing the obstacles which now stand in the way of their adoption, is clearly one which should be made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider, therefore, that our proposals should be regarded as being open to future review and that further consideration should be given to the question of the method of composing the Central Legislature in the light of the practical working of the Constitution."*.

Progressive Indian opinion demands the reversal of the system of indirect election to the system of direct election based on an extensive franchise. It prefers the system of direct election in territorial constituencies by means of single non-transferable vote to the system that has been adopted in the Act.

Officers of the Chambers.—The Council of State shall be empowered to elect two of its members as **President** and **Deputy President**† respectively. They shall hold office as long as they remain members of the Council though they can resign it any time they please. They can also be removed from office by a majority vote in the Council, provided fourteen days notice has been given for the purpose. When the office of the President is vacant, the Deputy President will perform the duties of the office. In case the office of the latter is also vacant, any member of the Council, appointed by the Governor-General in his discretion, can perform the necessary duties. The President and the Deputy President shall receive such salaries which might be fixed by an Act to be passed by the Federal Legislature. Until that is done, the Governor-General can fix the salary.

The
President
and the
Deputy
President of
the Council
of State

Salaries

* Para 202. † Sec. 22.

The Speaker and the Deputy Speaker of the Assembly

The above provisions also apply to the Federal Assembly. In this case, however, the President and the Deputy President are to be called the **Speaker** and the **Deputy Speaker** respectively. It is also laid down that when the Assembly is dissolved, the Speaker shall not be called upon to vacate his office until immediately before the first meeting of the new Assembly.*

The President or the Speaker or person acting as such shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.†

Age qualifications

General Qualifications of Members.—Only a person who is a British subject, or the Ruler or a subject of an Indian State, which has acceded to the Federation, is qualified for a seat in the Federal Legislature from British India. A member of the Council of State should not be less than *thirty* years of age while a member of the Federal Assembly should not be less than *twenty-five* years of age.‡

Seats for the Council of State

In the case of a seat in the Council of State allotted to a Governor's Province or a Chief Commissioner's Province, the proposed candidate must be qualified to vote in a provincial territorial constituency, or in the case of seat allotted to British Baluchistan, must possess such qualifications as may be prescribed. In the case of a seat in the Council of State allotted to the Anglo-Indian, the European, or the Indian Christian communities, the candidate for the seat must possess such qualifications as may be prescribed.§ In the case of a seat in a Federal Assembly, a person is qualified to hold a Sikh seat, a Muhammadan seat, an Anglo-Indian seat, a European seat, an Indian Christian seat, or a Woman seat allotted to a Governor's Province, or the Province of Coorg, only if he is qualified to hold a seat of the same class in the Legislative Assembly, or in the case of Coorg, the Legislative Council, of that Province. In the case of any other seat in the Federal Assembly a candidate is required to possess such qualification as may be prescribed.¶

In the case of a seat allotted to an Indian State in the Federal Legislature, the candidate must

* Sec. 22 (5). † Sec. 23 (1). ‡ First Schedule, Part I (1)

§ First Schedule, Part I, 11 (1 & 2).

¶ First Schedule Part I, (i & ii).

be a British subject, or the Ruler or a subject of the State which has joined the Federation. The general age qualifications* stated above also apply here, though they do not apply to a Ruler who is exercising ruling powers. The Governor-General also may, in his discretion, declare as regards any State, whose Ruler is a minor at the time of the establishment of the Federation, that the qualifications above-mentioned shall not apply to any named subject or subjects in general of that particular State until the Ruler begins to exercise ruling powers.†

Seats for
the Indian
States

General Disqualifications of Members.—A person shall be disqualified† for being elected a member of any Chamber of the Legislature, if

(a) he holds any office of profit under the Crown in India other than an office declared by the Act of the Federal Legislature not to disqualify its holder; [It is, however, provided§ that a person shall not be deemed to hold an office of profit under the Crown in India if he is a Federal or a Provincial Minister, or while serving a State he remains a member of one of the Services of the Crown in India, and retains all or any of his rights as such.]

Office of
profit

(b) he is of unsound mind and he is so declared by a competent court;

Unsound
mind

(c) he is an undischarged insolvent;

(d) he has been convicted of any offence or corrupt or illegal practice relating to elections as declared by Order in Council or by an Act of the Federal Legislature unless such period has passed as may be fixed by the above-mentioned Order or the Act;

Corrupt
practice
regarding
election

(e) he has been sentenced to transportation or to imprisonment for not less than two years unless a period of five years has elapsed since his release. The Governor-General, however, acting in his discretion may reduce this period in any particular case;

Two years'
imprison-
ment

(f) having been nominated as a candidate for the Legislature, Federal or Provincial, he has failed to lodge a return of election expenses within the specified time and in the prescribed manner, unless five years have elapsed after the date when the return was to be filed. The Governor-General, acting in his

Return of
election
expenses

* First Schedule, Part II, Sec. 4.

† First Schedule, Part II, Sec. 4 (a). †Sec. 26. §Sec. 26 (4).

direction, can also remove this disqualification. It is also provided that this disqualification shall not take effect until the expiration of one month from the date by which the return ought to have been lodged or after the lapse of such longer period as the Governor-General, acting in his discretion, may in any particular case allow.

Serving a sentence of transportation or imprisonment

(g) Moreover a person is not capable of being chosen a member of either Chamber while he is serving a sentence of transportation or of imprisonment for a criminal offence. It is laid down that if a person becomes disqualified under the above clauses, his seat shall not become vacant until three months have passed and if an appeal or revision is brought against the conviction or sentence which disqualifies a person, until that is disposed of. During this period he has no right to sit or vote in the House. If a person, who is not qualified to be a member of the House or is disqualified as such, and is prohibited to sit and vote in the House, sits or votes in the House, he shall be liable to a penalty of five hundred rupees a day. This is recoverable as a debt to the Federation.

It will be noticed that the disqualifications for membership include conviction with sentence of two years' imprisonment or transportation for any offence by a court in British India or in a Federated State. Also a person in prison serving a sentence for a criminal offence is disqualified to seek election. This means that persons convicted of certain political crimes cannot become members before the lapse of five years since their release, if they have been sentenced to more than two years' imprisonment. If they want to seek election before the passing of the prescribed period, they have to apply to the Governor-General for permission, which may be given in his discretion.

Meetings of the Chambers

General Provisions regarding the Legislature.—The Chambers of the Federal Legislature shall be summoned to meet once at least in every year, and twelve months shall not intervene between their meetings in successive sessions. Subject to this, the Governor-General may, in his discretion, summon the Chambers or either Chamber to meet at a place

and time which he thinks fit. He may prorogue the Chambers or dissolve the Federal Assembly. The first meeting of the Chambers in their first session shall take place on a day as may be specified in His Majesty's Proclamation by which the Federation shall come into being.* The Governor-General may, in his discretion, address either Chamber of the Federal Legislature or both the Chambers assembled together. He may also send, in his discretion, messages to either Chamber regarding a Bill, and that Chamber shall forthwith consider any matter, which it is required to consider by the message.†

Casual vacancies in the Council of State shall be filled in the case of British Indian elected seats by election by members of the community to which a particular seat belongs, and in the case of a nominated seat by fresh nomination. Such vacancies in the Federal Assembly shall be filled up by the same method by which the member who had vacated was originally elected.

All proceedings in the Federal Legislature shall be conducted in the English language,‡ though provision is made that rules of procedure of each Chamber and the rules regarding the joint sittings of the Chambers shall allow persons unacquainted, or not sufficiently acquainted, with the English language to use another language. This means that the proceedings of the Legislature cannot be carried on in the provincial languages of India. Only those members are allowed to use their provincial languages, who are unacquainted or insufficiently acquainted with the English language. Objection has been taken to these provisions in India because it means banning the use of the Indian languages as far as the proceedings of the Legislature are concerned, and putting a premium on the knowledge of a foreign language, *viz.*, English. In the second place, in actual working, it has been felt that this provision stands in the way of proper participation in the work of the House by many members, who do not know English, or do not know it well. Lastly, it is very difficult to have a definite test of whether one's knowledge of the English language is sufficient or insufficient. A similar provision also exists in respect of the proceedings in the Provincial Legislatures. Conflicting rulings have been

Address
by the
Governor-
General

Message
from the
Governor
General

Vacancies

Language

Experience
in the
Provincial
Assemblies

given by the Speakers of the various Provincial Assemblies on the point. Some have interpreted this provision liberally so as to allow practically the members to speak in their own provincial language, while others have interpreted it rather rigidly, thus causing inconvenience to many members. But the mere liberal interpretation of this provision cannot solve the problem, as when the proceedings are to take place in English, members of the House not knowing English cannot understand what takes place in the House. This has been realized by some of the Provincial Governments as a result of the actual working of the Provincial Legislatures; and they have conveyed to the Secretary of State for India their request for the change of this provision in respect of the Province.* Nothing, however, has so far been done in respect of this question. The Hon'ble the Speaker of the Punjab Assembly has only recently relaxed his own conservative ruling on the point and has permitted members of the House to hold discussion on certain important Bills in Urdu. This concession has been utilized by important members of the House, including the Hon'ble the Premier and the Leader of the Opposition. The Bombay Assembly has also accepted the interpretation of this provision that in respect of members who feel that they cannot express themselves in the English language, can speak in any recognized language of the Province.

The
Freedom of
Speech

Privileges of the Members.—The privileges of the members are assured† under the Act. Freedom of speech in the Legislature is allowed. No member of the Legislature shall be liable to any proceedings in any court in respect of anything said in the House, or any vote given by him there, or in any Committee of the House. No person shall incur any liability in respect of the publications by or under the authority of either Chamber of the Legislature of any report, paper, votes, or proceedings. Other privileges of the members of the Chambers are to be defined from time to time by an Act of the Federal Legislature. Until that is done, the privileges enjoyed by the members of the present Indian Legislature shall continue to be enjoyed by the members of the Federal Legislature. The Federal Legislature can also

No liability
regarding
vote, speech
and publica-
tion of
report, etc.

Other privi-
leges to be
defined by
the Federal
Legislature

* The Government of the Punjab, it is understood, has done that.

† Sec. 28.

by an Act provide for the punishment, after conviction by a court, of persons who refuse to give evidence or produce documents before a Committee appointed by any Chamber of the Legislature, if they are required to do so by the Chairman of such a Committee. This is subject to such rules as may be made by the Governor-General by the exercise of his individual judgment for regulating the attendance of persons who are or have been in the service of the Crown in India and safe-guarding confidential matter from disclosure. The Federal Legislature has no power to confer on either Chamber, or on both Chambers sitting together, or on any Committee, or Officer of the Legislature, the status of a court or any punitive or disciplinary powers other than that of removing or excluding persons infringing the rules or standing orders, or otherwise behaving in a disorderly manner. Members of the Chambers shall receive such salaries and allowances as may from time to time be decided by the Federal Legislature. Until that is done, the allowances enjoyed before the establishment of the Federation by the members of the present Legislative Assembly shall be paid to the members of the Federal Legislature.*

Thus the privileges of the Legislature are specified and limited, unlike the British House of Commons. According to Mr. K. T. Shah :†

"On the whole the Chapter of the Privileges of the Legislature in India has none of the constitutional interest or significance, none of the historical romance, that has gathered round the corresponding subject in Britain."

The House has no punitive authority over the members, officers, or outsiders, though the latter might be guilty of disrespect to the House. Moreover there is nothing like a contempt of the Legislature as is the case in Britain.

Mr. Shah further points out that "the question is not altogether free from doubt, if the rights or privileges of the Legislature are not violated when members duly elected are prevented by executive action, or detention without trial, from attending to their duties in the House. It is permissible to hold that the Federal Legislature can correct and finally settle this doubt by making exemption from such detention a privilege of members by Act of the Federal Legislature."†

Evidence before a Committee of a House

No status of a Court

Salaries and allowances of the members

Privileges Specified and Limited

No Contempt of the Legislature

* Sec. 29. †Shah, K. T., Federal Structure, page 345.
† Shah, K. T., Federal Structure, pages 345-46.

Dr. Shafaat Ahmad Khan, on the other hand, says that the Constitution Act has removed anomalies and conferred powers on the Legislature which are ample and effective.

Can take part in the proceedings of the Houses but have no right to vote

Ministers enjoy the right to vote

Power to make laws for British India and the Federated States

Extra-territorial jurisdiction

Position of the Counsellors, the Ministers, and the Advocate-General.—Every Minister, every Counsellor, and the Advocate-General have been given the right to speak in, and otherwise, participate in the proceedings of either Chamber, any joint sitting of the Chambers, and any Committee of the Legislature of which they may be named members. The Section* which gives these powers to the above-mentioned officers does not confer on them the power to vote. Thus the position seems to be that though the Counsellors and the Advocate-General can take part in the proceedings of the Houses as other members can do, yet they cannot vote like other members. The Ministers, however, by virtue of their being ordinary members of the Legislature, enjoy the right to vote.

Powers and Functions of the Legislature.—The Federal Legislature can make laws for the whole or any part of British India, or for any Federated State, subject to the provisions of the Act. Federated Acts† have extra-territorial application in regard to the following :

(a) British subjects and servants of the Crown in any part of India.

(b) British subjects who are domiciled anywhere in India.

(c) Persons on ships or aircraft registered in British India or any Federated State wherever they may be.

(d) In the case of law with respect to matters relating to the Indian States for which the Federal Legislature has power to make laws, to subjects of those States, wherever they may be.

(e) In the case of a law for the regulation or discipline of any naval, military, or air force raised in British India, to members and persons attached to that force, wherever they may be.

* Sec. 21. †Under this head, the legislative relations between the Federation and the Provinces are also described.

‡ Section 99 (1 & 2.)

The wide area of legislative subjects has been divided into three Legislative Lists : **the Federal Legislative List, the Provincial Legislative List, and the Concurrent Legislative List.** It is provided that the Federal Legislature shall have authority to make laws for subjects on the Federal List. It has also got power to make laws with respect to matters in the Provincial Legislative List except for a Province or any part thereof,* which means area not under any Provincial authority, and therefore including the Chief Commissioners' Provinces. The Federal Legislature is also empowered to make laws with respect to any of the matters given in the Provincial Legislative List, if the Governor-General, in his discretion, declares by a "Proclamation of Emergency," that a grave emergency exists whereby the security of India is threatened, whether by war or internal disturbance. This is, however, subject to the provision that no Bill or amendment for the above-mentioned purpose shall be introduced or moved without the previous sanction of the Governor-General, to be given in his discretion. The latter shall not give this sanction until he is satisfied that the provision proposed is a proper provision in view of the nature of the emergency. Such a "Proclamation of Emergency" may be revoked by a subsequent Proclamation. It shall be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament. It shall cease to operate after the lapse of six months unless during that period it has received the approval of Parliament. Laws made by the Federal Legislature under the powers conferred on it by the declaration of a "Proclamation of Emergency" shall cease to have effect after the expiry of six months after the Proclamation has ceased to operate, except regarding things done or omitted to be done before the expiry of the said period.† It shall also be lawful‡ for the Federal Legislature to pass an Act regarding any matter on the Provincial Legislative List, if the Legislatures of two or more Provinces signify their desire by passing resolutions to the effect that regulation of that matter is desirable in these Provinces by an Act of the Federal Legislature. Such an Act may be amended or repealed

Demarcation
of legisla-
tive
jurisdictions

Power to
make laws
for the sub-
jects on the
Federal
Legislative
List

Proclama-
tion of
Emergency

Power of
the Federal
Legislature
to make law
for the Pro-
vinces

Power of
the Federal
Legislature
to legislate
for two or
more Pro-
vinces by
consent

* Sec. 100 (4).

† Sec. 102. ‡ Sec. 103.

Residual Powers of legislation

by an Act of the Legislature of the Province concerned. Regarding the **Residual Powers**, *viz.*, those powers which have not been enumerated in any of the Legislative Lists, it is provided* that the Governor-General may by public notification assign to the Federal Legislature or to a Provincial Legislature power to enact a law or impose a tax. The executive authority of the Federation or of the Province, as the case may be, shall extend to the administration of any such law, unless the Governor-General directs to the contrary. The Federal Legislature may by an Act apply† the Naval Discipline Act to the Indian naval forces with such modifications and adaptions as may be necessary in view of the circumstances of India, and for the purpose of authorising or requiring anything which under the original Act is to be done by or to the Admiralty, or by or to the Secretary of the Admiralty, to be done by or to the Governor-General, or some person authorised to act on his behalf, and in the application of such an Act to the forces and ships of His Majesty's navy other than those of the Indian may, with a view to such changes as may be made or may have been made by His Majesty in Council to regulate the relations of the British forces and ships to those of India. When any forces and ships of the Indian Navy are placed at the disposal of the Admiralty, the Naval Discipline Act shall apply to those forces without any modifications.

Concurrent Powers

The Federal Legislature, besides having exclusive power to make laws regarding matters on the Federal Legislative List, has concurrent power with the Provincial Legislatures to make laws regarding subjects contained in the Concurrent Legislative List. Regarding matters mentioned in Part II of this List, the executive authority of the Federation extends to the giving of directions to the Provinces to carry out any Federal laws regarding such matters. This concurrent power of the Provincial and the Federal Legislatures regarding certain matters is bound to lead to various complications in actual practice, though the Federal Court has the final authority to decide whether a particular law is within the competence of the Provincial or the Federal Legislature. To avoid this friction, provision has been made in the Act to the effect that if any Provincial law is repugnant to any provision of the Federal law,

Conflict between Provincial and Federal laws

*Sec. 104 †Sec. 105.

which the Federal Legislature is competent to make, or to any provision of an existing Indian law regarding matter in the Concurrent Legislative List, the Federal law, whether passed before or after the Provincial law, or the existing Indian law, as the case may be, shall prevail against the Provincial law. If, however, a Provincial law regarding subjects on the Concurrent Legislative List is in conflict with an earlier Federal law or an existing Indian law, and having been reserved for the Governor-General's consideration, or for the signification of His Majesty's pleasure, has received the assent of the Governor-General or of His Majesty, it shall prevail in that Province. But the Federal Legislature has the authority to pass further law with respect to the same matter any time it likes, subject to the provision that no Bill or amendment repugnant to such a Provincial law which has received the assent of the Governor-General, or of His Majesty, can be introduced or moved in the Federal Legislature without previously securing the sanction of the Governor-General, to be given at his discretion.*

Provincial law that has received the sanction of His Majesty

Regarding the Federated Indian States, the Federal Legislature can make laws only in accordance with the *Instrument of Accession* of those States and subject to limitations contained in the Instruments.† If any provision of a law passed by the Federal Legislature extending to the Federated State is repugnant to a law of such a State, the former shall prevail and the latter shall be void to the extent of repugnancy.‡ The Federal Legislature shall have no power to make any law for any Province or a Federated State by reason only of the entry in the Federal Legislative List relating to the implementing of treaties and agreements with other countries except with the previous consent of the Governor, or the Ruler, as the case may be. So much of any law as is valid only by virtue of any such entry may be repealed by the Federal Legislature; and if the treaty ceases to be in operation, it can be repealed by the Province or the State within its jurisdiction.§

Powers of the Federal Legislature to legislate for the Federated States.

Conflict between a Federal Law and a Federated State's law

It is to be presumed that the Federal Legislature shall have the usual powers of passing resolutions, asking questions and supplementary questions, and moving motions of adjournment.

The position under the Act of 1919 was that the Central Legislature could make laws on any

* Sec. 107. † Sec. 101. ‡ Sec. 107 (3). § Sec. 106

subject even if it was classified as a Provincial subject, while the Provincial Legislature could do the same thing in the Province where its jurisdiction extended even if a particular subject was classified as a Central subject. Provision was made in the Act to the effect that "the validity of any Act of the Indian Legislature or any Local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a Provincial subject or a Central subject as the case may be." Thus it is clear that there was no completely *exclusive* jurisdiction of the Central and Provincial Legislatures, at least as far as the law was concerned. Such a state of affairs could not be allowed to continue if the federal scheme of government was to be introduced. The very conception of federalism implies the distribution of powers between the centre and the units. This has been done by the Act of 1935 by having a statutory demarcation between the legislative powers of the Federal and the Provincial Legislatures and assigning to each an exclusive field of competence. For this purpose the whole field of legislation has been divided between the Centre and the Provinces with more or less exclusive jurisdiction, but as it is not possible to do so completely, some subjects are placed under the concurrent jurisdiction of both. Thus there are three Lists—the Federal Legislative List, the Provincial Legislative List, and the Concurrent Legislative List. Subjects of all-India importance are placed on the Federal Legislative List, and of local importance on the Provincial Legislative List. The sphere of concurrent legislation presented greater difficulty.

**Demarca-
tion of
legislative
powers**

**The Federal,
the Provin-
cial, and the
Concurrent
Legislative
Lists**

**J. P. C. on
Concurrent
Legislation**

Regarding this the Joint Parliamentary Committee wrote : "...Experience has shown, both in India and elsewhere, that there are certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central Legislature should have a legislative jurisdiction, to enable it in some cases to secure uniformity in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs, arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province. Instances of the first are provided by the subject-matters of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic diseases. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were

destroyed or whittled away by the unco-ordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province."*

When there is concurrent jurisdiction, there is a danger of conflict between a Federal law and a Provincial law. It is provided that in such a case the former shall prevail. The Federal Legislature is also empowered to make laws regarding Provincial subjects in cases of emergency and by consent.

Although the lists of subjects dealt with in all the three Lists are of great length and complexity, yet it is impossible to exhaust the subjects as it is not possible to foresee what subjects might crop up later. Thus provision must be made regarding *residuary* subjects. The Joint Parliamentary Committee observed :—

" It would, however, be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor can it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise; and therefore, however carefully the Lists are drawn, a residue of subjects must remain, however small it may be, which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures. " †

Thus provision had to be made for the residual powers. But as the Joint Parliamentary Committee further observed :

" A profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces. " ‡

Under the circumstances a compromise has been adopted by which the allocation of the residuary powers has been left to the discretion of the Governor-General, and is to be settled by him *ad hoc* on each occasion when the need for legislation may arise. This distribution of powers in various Lists means complications and the possibility of increased litigation.

To sum up, the general principles on which the distribution of powers between the Federal and the Provincial Legislatures have been carried out seem to be as follows :—

(a) to make as complete, and as rigid as possible, division of functions between the Federal

Conflict
between a
Federal
law and a
Provincial
law

Residuary
Subjects

Compromis
solution

General
principles.

and the Provincial Legislatures as embodied in two separate Lists, the Federal Legislative List and the Provincial Legislative List;

(b) to give exclusive jurisdictions to the Federal and the Provincial Legislatures in their respective spheres;

(c) to assign to the Governor-General and the Federal Legislature, certain over-riding powers for legislation on Provincial subjects and applicable to the Provinces in cases of emergency and by the consent of the Provinces;

(d) to have a Concurrent List of the remaining matters subject to the concurrent jurisdiction of the Federal and the Provincial Legislatures, but providing that the Federal law shall prevail in the event of a conflict; and

(e) the jurisdiction regarding residuary powers to be determined by the Governor-General.

The
Federal
Legislature
vis-a-vis
the
Federated
States.

In connection with the States, it is provided that the Federal Legislature can only make laws in accordance with the Instruments of Accession, but unlike the Provinces, this jurisdiction is not exclusive.

"It will be competent for the States to exercise their existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as Federal, the latter will prevail."

Voting by the Representatives of the Indian States on questions of purely British Indian Interests.—There is no legal bar against the representatives of the Indian States preventing them from voting on questions of purely British Indian interest. The British India-Delegation urged before the Joint Parliamentary Committee as under:—

British
India
Delegation's
demands

(1) "that in a division on a matter concerning solely a British Indian subject, the State representatives should not be entitled to vote;

(2) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final; but

(3) that if a substantive vote of no confidence is proposed on a matter relating solely to a British India subject, the States' representatives should be entitled to vote, since the

decision might vitally affect the position of a Ministry formed on a basis of collective responsibility ;

(4) that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign."^{*}

Regarding this the Joint Parliamentary Committee observed :

" We do not think that these suggestions would in any way meet the case. Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence ; the distinction between formal votes of no confidence and other votes is an artificial and conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand, the States have made it clear that they have no desire to interfere in matters of exclusively British India concern, nor could we suppose that it would be in their interests to do so ; but they are anxious, for reasons which we appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withholding their support from a Ministry whose policy they disapprove. In these circumstances we think that the true solution is that there should be no statutory prohibition, but that the matter should be regulated by the commonsense of both sides and by the growth of constitutional practice and usage."^{*}

J.P.C. s
observations

CHAPTER VI

THE FEDERAL LEGISLATURE—(Continued)

Restrictions on the Powers of the Federal Legislature ; Prevention of Discriminatory Treatment of British Companies and British Subjects ; Professional and Technical Qualifications ; Medical Qualifications ; Some other Restrictions on the Powers of the Federal Legislature ; General Procedure : Legislative ; Procedure in Financial Matters ; Rules of Procedure ; Legislative Powers of the Governor-General ; Provisions in case of a failure of the Constitutional Machinery ; The Ministry *vis-a-vis* the Legislature ; Central Responsibility.

Restrictions on the Powers of the Federal Legislature—A Bill or amendment cannot be introduced.* or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General, to be given in his discretion, which

Previous
sanction
of the
Governor-
General

(a) "repeals, amends or is repugnant to any provisions of any Act of Parliament extending to British India ; or

(b) repeals, amends or is repugnant to any Governor-General's or Governor's Act, or any Ordinance promulgated in his discretion by the Governor-General or a Governor ; or

(c) affects matters as respects which the Governor-General is, by or under this Act, required to act in his discretion ; or

(d) repeals, amends, or affects any Act relating to any police force ; or

(e) affects the procedure for criminal proceedings in which European British subjects are concerned ; or

(f) subjects persons not resident in British India to greater taxation than persons resident in British India, or subjects companies not wholly controlled and managed in British India to greater taxation than companies wholly controlled and managed therein ; or

(g) affects the grant of relief from any Federal tax on income in respect of income taxed or taxable in the United Kingdom."

* Sec. 108.

The Federal Legislature is not authorised* under the Act to make any law affecting the Sovereign or the Royal Family, or the Succession to the Crown, or the sovereignty, dominion or suzerainty of the Crown in any part of India, or the law of the British nationality, or the Army Act, the Air Force Act, or the Naval Discipline Act, or the law of Prize or Prize Courts, and except in so far as has been expressly permitted by the Constitution Act to make any law amending any provision of this Act, or any Order in Council made under it, or any rules made under this Act by the Secretary of State, or by the Governor-General or a Governor in his discretion, or by the exercise of his individual judgment. The Federal Legislature cannot discuss the conduct of any Judge of the Federal Court or the High Court in the discharge of his duties.† It has no authority to make any law derogating from any prerogative right of His Majesty to grant special leave to appeal from any court, except in so far as it may be expressly permitted under the Act.

It has been very clearly stated that nothing in this Act shall be taken to affect the power of British Parliament to legislate for British India, or any part thereof.

The Governor-General may also direct that a Bill, clause, or amendment shall not be proceeded with further by the Federal Legislature, if he certifies in his discretion that its consideration would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace or tranquillity of India or any part thereof.‡

In addition to these restrictions, previous sanction of the Governor-General is required in certain other cases; for instance, the financial Bills, and any Bill pertaining to subjects in the Concurrent Legislative List, which provides for the giving of directions to the Provincial Governments, or any Bill which affects taxation in which the Provinces are interested,§ must receive the sanction of the Governor-General, before they can be introduced in the Federal Legislature.

The
Sovereign
and the
Succession

Conduct of
the Judges

Power of the
British
Parliament
to legislate
for India

Stopping
the consider-
ation of a Bill

Previous
sanction of
the Gover-
nor-General

Under his Instrument of Instructions, the Governor-General is further instructed not to give his assent to but to reserve for the signification of His Majesty's pleasure*—

Bills to be reserved for the signification of His Majesty's pleasure

(a) any Bill which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;

(b) any Bill which in his opinion would, if it becomes law, so derogate from the powers of the High Court of any Province as to endanger the position which these Courts are by the said Act designed to fill;

(c) any Bill passed by a Provincial Legislature and reserved for his consideration which would alter the character of the Permanent Settlement;

(d) any Bill regarding which he feels doubt whether it does, or does not, offend against the provisions regarding discrimination, etc., against British companies and British subjects domiciled in India.

Summary

Federal Legislature a subordinate law-making body

It is clear from the above that the Federal Legislature is not a sovereign law-making body with unlimited jurisdiction like the British Parliament. It is a subordinate law-making body which has been vested with definite and restricted powers of legislation by the Government of India Act, 1935, passed by the British Parliament. Thus the power of the Imperial Parliament to legislate for India remains in tact. On the other hand the Federal Legislature does not possess the power to legislate about certain subjects, such as those which affect the Sovereign or the Royal Family, the Succession to the Crown, the sovereignty, dominion or suzerainty of the Crown in any part of India, etc. Also it cannot make laws for the Provinces and the States except under certain conditions. To sum up, it may be stated that there are the following four kinds of restrictions on the powers of the Federal Legislature :

(i) It has no constituent powers ; the power of the Imperial Parliament to legislate for India remains.

(ii) Certain matters are beyond its jurisdiction, while regarding others the previous sanction of the Governor-General is necessary.

* Para XXVII.

(iii) The Governor-General can refuse to give assent to Bills, and can reserve them for His Majesty's pleasure, who can disallow even those Act which have been assented to by the Governor-General.

(iv) Provisions preventing discriminatory treatment of British companies and British subjects make a serious encroachment on the powers of the Legislature.

Prevention of Discriminatory Treatment of British Companies and British Subjects. Important restrictions have been put on the powers of the Federal Legislature with the object of preventing discriminatory treatment of British trading and commercial interests and the British subjects domiciled in India. A British subject domiciled in the United Kingdom is given exemption* from the operation of any Federal or Provincial law if that imposes any restriction on the right of entry into British India or imposes by reference to place of birth, race, descent, language, religion, domicile, residence or period of residence any disability, liability, restriction or condition in regard to travel, residence, the acquisition, holding, or disposal of property, the holding of public office or the carrying on of any occupation, trade, business or profession. This exemption shall hold good only as long as the Indian subjects are not subject to any restriction, condition, liability, or disability of the above-mentioned type in the United Kingdom. It is also provided that the application of quarantine regulations or the exclusion or the deportation of undesirable persons are not to be considered a restriction on the right of entry within the meaning of this provisions. Moreover, the Governor-General or the Governor of any Province may by Public Notification suspend wholly or partially the above-mentioned exemptions and rights in the case of any grave menace to the peace or tranquillity of any part of India, or as the case may be, any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the government. The Governor-General and the Governor, are to exercise these powers in their discretion, which means, not subject to the vote of the Legislature or to the advice of the Council of Ministers.

British subjects
domiciled in
the United
Kingdom,

Principle of
reciprocity

Taxation

The Federal Legislature, and for the matter of that, the Provincial Legislature, cannot pass discriminatory legislation regarding taxation. It is provided* that no Federal or Provincial law is to be considered valid which make the British subjects domiciled in the United Kingdom or Burma, or companies incorporated in the United Kingdom or Burma, subject to discriminatory taxation. Any law which make the above-mentioned companies or subjects liable to greater taxation than the companies or subjects of British India is to be considered as a discriminatory law.

Companies incorporated in the United Kingdom

A company incorporated† in the United Kingdom, whether before or after the passing of this Act, is to be considered to have complied with the provisions of any Federal or Provincial law regarding the place of incorporation, the situation of its registered office, the currency in which its capital or loan capital is expressed, the place of birth, race, descent, language, religion, domicile, residence, or duration of residence, of the members of the governing body of the company, of shareholders, or of the officers, agents, or servants of such companies. This is, of course, subject to the condition that any law of the United Kingdom does not impose any such conditions on companies incorporated in British India and carrying on business in the United Kingdom. Again, so long as the United Kingdom does not discriminate against British Indian companies regarding taxation, the British companies trading in India shall be considered to satisfy any condition for the purpose of enjoying exemption and receiving preferential treatment in respect of taxation which might be accorded to companies incorporated in India. British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a company incorporated in India are to be deemed to have complied with any conditions imposed by any Federal or Provincial law in India upon companies so incorporated relating to the same matters.‡ This is also, of course, subject to the provision that the United Kingdom treats the British Indian subjects in Britain on equal footing. Such British Indian subjects are also eligible to exemption or preferential treatment on the basis of reciprocity as far as the United Kingdom is concerned. One of the important Sections of the Act make the companies incorporated in the

Preferential treatment regarding taxation

* Sec. 112. † Sec. 113. ‡ Sec. 114.

United Kingdom before or after the passing of this Act and carrying on business in India, eligible* for any grant, bounty, and subsidy, payable out of the revenues of the Federation or of a Province, for the encouragement of any trade or industry, to the same extent as a company incorporated in British India, provided British Indian companies carrying on business in the United Kingdom are equally eligible with the companies of the United Kingdom for any grant or bounty, or subsidy payable out of the revenues of the United Kingdom, for the encouragement of the same trade or industry. A distinction, however, is made in the case of a company† which, on the day of the passing of the Act, was not engaged in British India in that branch of trade or industry for which the grant, bounty, or subsidy is proposed. An Act of the Federal Legislature, or of a Provincial Legislature, can provide that such a company shall not be eligible for any grant or bounty, etc., unless the company is incorporated under the laws of British India or of a Federated State, and such proportion, not exceeding one half, of the members of its governing body as may be prescribed by the Act, are British subjects domiciled in India or if it is so provided, the subjects of a Federated State; and that the company gives such reasonable facilities, as may be prescribed, for the training of British subjects domiciled in India or if it is so provided, subjects of a Federated State. For the purpose of these Sections, a company incorporated in the United Kingdom, but owning ships habitually trading to and from ports in India, shall be considered to be carrying on business in India.

Ships‡ registered in the United Kingdom or the aircraft registered in the United Kingdom can not be subjected to any discriminatory treatment regarding the ships, or their masters, officers, crew, passengers or cargo, except in so far as the ships and aircraft registered in British India are for the time being subjected by or under any law of the United Kingdom to discriminatory treatment.

It is realized that the above provisions cannot be the right and the proper method of solving the problem. To have a permanent solution, it is desirable that for the purpose of regulating trading rights and interests, there should be an appropriate

The grant c
subsidies,
etc.

Ships and
Aircraft

* Sec. 116. † Sec. 116 (2). ‡ Sec. 115.

Need of an
agreed con-
vention

convention based on reciprocity between Great Britain and India. Amity and goodwill are the necessary conditions for having a satisfactory basis for commercial relations between the two countries. The Act, therefore, makes provision for the contingency when a convention might be arrived at between the two countries. If such a convention is made between His Majesty's Government in the United Kingdom and the Federal Government in India, assuring similarity of treatment to British subjects and companies incorporated in the United Kingdom and Indian subjects and Indian companies incorporated in India, His Majesty may, provided he is satisfied that all necessary legislation has been passed both in the United Kingdom and in India giving effect to the above-mentioned convention, declare by an Order-in-Council that the provisions of this Act regarding discrimination may be suspended. Such an Order-in-Council shall have effect only as long as the convention is in force.*

Provision
for a trade
convention

In connection with the above, it may be noted that the Instrument of Instructions to the Governor-General contains the following Instruction† :

The
Governor-
General's
Instru-
ment of
Instructions

"In the discharge of his special responsibility for the prevention of measures which would subject goods of United Kingdom origin imported into India to discriminatory or penal treatment, Our Governor-General shall avoid action which would affect the competence of his Government and of the Federal Legislature to develop their fiscal and economic policy or would restrict their freedom to negotiate trade agreements whether with the United Kingdom or with other countries for the securing of mutual tariff concessions ; and he should intervene in tariff policy or in the negotiation of tariff agreements only if in his opinion the main intention of the policy contemplated is by trade restrictions to injure the interest of the United Kingdom rather than to further the economic interest of India. And We require and charge him to regard the discriminatory or penal treatment covered by this special responsibility as including both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on import) and indirect discrimination by means of differential treatment of various types of products ; and Our Governor-General's special responsibility extends to preventing the imposition of prohibitory tariffs or restrictions, if he is satisfied that such measures are proposed with the aforesaid intention. It also extends, subject to the aforesaid intention to measures which, though not discriminatory or penal in form would be so in fact.

"At the same time in interpreting a special responsibility to which this paragraph relates, Our Governor-General shall always bear in mind the partnership between India and the United Kingdom within Our Empire, which has long subsisted and the mutual obligations which arise therefrom."

Professional and Technical Qualifications.—The right of the Indian Legislature to regulate the practice of professions in India, though not destroyed, has been effectively curbed with the idea of preventing discrimination against persons, holding qualifications required in the United Kingdom, to follow a profession in India. It is provided that no legislation which prescribes or gives the authority to prescribe any professional or technical qualification for any purpose in British India or imposes any disability, liability, restriction or condition regarding practising of any profession or carrying on any occupation, trade or business, or the holding of any office in British India shall be introduced in either Chamber of the Federal Legislature or the Provincial Legislature without the previous sanction of the Governor-General and the Governor, respectively. This sanction is to be given in his discretion by the Governor-General or the Governor as the case may be. It is further laid down that the latter shall not give their sanction to such legislation unless they are satisfied that it provides that no person lawfully practising any profession, carrying on any occupation, trade, or business, or holding any office in British India, is debarred from continuing to do so unless it is necessary in the public interest to put certain conditions. Again all such legislation putting restrictions, etc., must be published at least four months before it comes into operation. If within two months from the date of its publication, complaint is made to the Governor-General or to the Governor, as the case may be, that the proposed legislation will operate unfairly against any class of persons, and they are satisfied that it is so, they can within their respective spheres disallow such legislation by Public Notification, exercising their individual judgment. The Governor-General and for the matter of that the Governors, in their respective spheres and exercising their individual judgment, may direct the application of the above-mentioned principles to any existing Indian law. If that is done, the functions under the Federal or Provincial law shall be performed by the Governor-General or the Governor respectively by the exercise of their individual judgment.*

Medical Qualifications.—Medical qualifications have formed a subject of special attention

Previous
sanction
of the
Governor-
General
or the
Governor

Notice
required

Safeguards
against non-
recognition
of British
medical
qualifications

under the Act. Safeguards have been provided against the Indian Legislature refusing to recognise British medical qualifications and preventing British qualified medical men to practise in India. It is laid down that a British medical practitioner domiciled in the United Kingdom shall not be excluded from practising in British India by any existing law or any Federal or Provincial law or from being registered as qualified to do so on any ground except that the diploma held by him is not a sufficient guarantee of his possessing required knowledge and skill for the practice of the profession. Even on this ground he cannot be excluded unless a Federal or a Provincial law provides that such a proposal excluding the holders of particular diploma from practice or registration shall not become operative until the lapse of twelve months after notice has been given to the Governor-General and to the University that grants that diploma. Such a proposal shall not come into effect or shall become null and void, if the Privy Council decides on an application that the particular diploma should be recognized as furnishing sufficient guarantee as required. The Privy Council can proceed in the matter on an application by any University or any other body in the United Kingdom granting the diploma in question or any aggrieved British subject; and after hearing them the Privy Council shall determine whether the diploma in question does or does not furnish a sufficient guarantee of the possession of the required knowledge. The result of the determination shall be notified to the Governor-General who shall communicate it to the authorities concerned and publish it. These provisions are inserted in the Act on the principle of reciprocity and therefore are subject to the condition that no discrimination takes place against Indians holding medical diplomas of British India practising in the United Kingdom. It is laid down that the above-mentioned provisions shall come into force only if the British subjects domiciled in India holding medical diplomas granted after examination in British India are not excluded from practising medicine, surgery or midwifery in the United Kingdom or from being registered there as qualified medical practitioners except on the ground that a particular diploma does not provide a sufficient guarantee of the possession of the necessary know-

Privy
Council's
power to
decide

Reciprocity

ledge and skill. This ground can be utilized for the purpose of exclusion only so long as the law of the United Kingdom provides for the question to be decided by the Privy Council. "Thus the same treatment which Indians receive in the United Kingdom is secured statutorily to British Practitioners in India." British medical practitioners in India and British Indian medical practitioners in the United Kingdom shall not be subjected to any liability, disability restriction or conditions in the practice of their professions, to which persons practising in the other country are not subjected. The power, however, of any recognized authority in the United Kingdom or British India to suspend or debar any person from practice on the ground of misconduct or to remove any person from a Register on the score of that reason, is preserved by the Act.* Members of the Indian Medical Service or any other branch† of His Majesty's forces who are on the active list shall be deemed to be qualified to practise medicine, etc., and to be registered in British India by virtue of their position.†

Suspension
for miscon-
duct

Officers of
Indian
Medical
Service, etc.

The theory
of reciprocity
and partner-
ship examin-
ed

It should be noted that these provisions in the Act are strongly resented by Indian opinion. It is all very well to preach the principle of reciprocity, but reciprocity between two unequal partners cannot be just to the weak partner. There is no denying the fact that at this time trade reciprocity or partnership in the economic sphere between England and India is a partnership between a giant and a dwarf. India is backward industrially, while England is a leader in this field. To allow British capital and British trading interests free and equal scope in India as Indian capital and Indian interests, means that India shall always remain backward, because under the present circumstances it cannot compete with British trading interests. Particularly to make British companies eligible for subsidies, etc., if no distinction is made in that matter in respect of Indian companies trading in Britain, will defeat the very purpose for which the subsidies will be granted. In this connection the Federation of Indian Chambers of Commerce and Industry wrote in a memorandum submitted to the Viceroy :—

* Sec. 120. † Sec. 121.

Indian
Chambers of
Commerce
and Indus-
try's criti-
cism

"The principle of reciprocity provided for under Sections 111 to 116 is devoid of any value as, in the first instance, the right of initiating discriminatory legislation is vested in His Majesty's Government in the United Kingdom and the Federal Government is not vested with any such powers of initiation and in the second instance, there is hardly any reciprocal advantage to India as the number of Indian concerns operating at present in the United Kingdom is negligible compared to the large number of British concerns operating in India dominating not only the export and import trade, coastal and overseas shipping, banking and insurance, tea, jute, coal industries, but are responsible in crushing many indigenous enterprises. If the word reciprocity is to have any meaning under the Government of India Act, it must be provided that the right of initiative in respect of discriminatory legislation rests with the Government of India."

Thus the Government of India cannot foster or encourage India's national industries and India can never become economically self-sufficient. This would mean the failure of India to solve her bread problem and also the problem of unemployment. The only way out of the difficulty, perhaps, is a sort of State Socialism and encouragement to such State Industries by some backdoor method. The provisions in the Act, however, are so far-reaching and complete that it is impossible to foresee whether even this would be possible.

It is interesting to note that the Simon Commission was not in favour of inserting in the Act any such provision prohibiting discriminatory legislation. Its stated :

"Many other interests have asked for similar constitutional safeguards and we are clear that statutory protection could not be limited to particular minorities or to discrimination in matters of trade and commerce only. The statutory provision would, therefore, have to be drawn so widely as to be little more than a statement of abstract principle affording no precise guidance to courts which would be asked to decide whether a particular group constituted a minority and whether the action complained of was discriminatory. Moreover having regard especially to the ingenuity and persistence with which litigation is carried on in India, we should anticipate that an enactment of the kind would result in the transfer to the law courts of disputes which cannot be conveniently disposed of by such means.....these objections are decisive against the proposal to prevent discriminatory legislation by attempting to define it in a constitutional instrument."*

J.P.C.'s.
views regard-
ing legisla-
tive discri-
mination

The Joint Parliamentary Committee, however, thought that it was possible to enact provisions against legislative discrimination. It wrote :

"We do not forget that to the Statutory Commission the technical objections to any attempt to define discriminatory legislation in a constitutional instrument seem decisive, but we observe that the

* Vol. II, Para 156.

Federal Structure Committee in their Fourth Report, which was adopted by the Second Round Table Conference, saw 'no reason to doubt that an experienced parliamentary draftsman would be able to devise an adequate and workable formula which it would not be beyond the competence of a court of law to interpret and make effective.' The opinion of a body which contained so many distinguished lawyers must carry great weight, and we concur with them in thinking that the attempt should be made."*

Again it wrote :

" But, with the passing of a new Constitution Act on the lines of the recommendations which we make in this Report, the Convention in its present form at all events, will necessarily lapse ; and, unless the Constitution Act otherwise provides, the Federal Legislature will enjoy complete fiscal freedom, with little in the nature of settled tradition to guide its relationship in fiscal matters of this country. The difficulties which would be likely to arise from this uncertainty would, moreover, find a fruitful source of increase in that atmosphere of misunderstanding to which we have alluded."†

After making clear that there is no intention of imposing unreasonable fetters on the liberty of the future Indian Legislature with the idea of securing advantageous treatment for British trading interests, it referred to the statements of a very disturbing character of some leaders, which have aroused suspicion in the United Kingdom. It then concluded :

" In these circumstances, appropriate provisions in the Constitution Act may serve the double purpose of facilitating the transition from the old to the new conditions, and of reassuring sensitive opinion in both countries. Certainly, such provisions would in no way imply a belief that there is real ground for the apprehensions entertained on either side."

It wished to make it clear that it had no idea to put any measure which would interfere with the position obtained by India as the integral part of the British Empire through the Fiscal Convention, but it thought it would be clearly of great advantage to allay any fears by declaring in the Constitution Act the principles governing the relations between Britain and India. In the opinion of the Committee :

" The machinery of the Governor-General's special responsibilities, supplemented by Instrument of Instructions, offers India and United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application."

Regarding the principles of future trade relations between India and the United Kingdom, it is thought that the United Kingdom and India must approach the aforesaid problem in a spirit

of reciprocity. This reciprocity consists in a deliberate effort to expand the whole range of the mutual trade to the fullest possible extent compatible with the interests of their own people. This conception of reciprocity, however, does not preclude either partner from entering into special trade agreements with other countries, but it certainly implies that

"When either partner is considering to what extent it can offer special advantages of this kind to a third country without injustice to the other partner, it will have regard to the general range of benefits secured to it by the partnership, and not merely the usefulness of the partnership in relation to the particular commodity under consideration at the moment."*

Summary
of the pro-
visions

From the actual provisions inserted in the Act it is clear that they prevent the Federal or the Provincial Legislatures from imposing any disability on British subjects domiciled in India and British companies trading in India. No discrimination can take place against ships and aircraft. These companies are also eligible for any bounty and subsidies that may be granted to Indian companies. Only in the case of companies which are not engaged in the particular trade at the time of the passing of this Act, a distinction is made by authorising the Legislature to impose certain conditions in order to make them eligible for subsidies, etc.

Mr.
Jayakar's
views

From the Indian point of view these provisions are certainly very extensive and uncalled for. In the words of Mr. Jayakar :—

"No question of reciprocity enters into this. Reciprocity in any case, between a rich and an industrially powerful country like Britain and a poor and backward country like India is a bit of camouflage, but as applied to administrative discrimination it is nothing less than moonshine.....At a time when the spending of money for public works in order to relieve unemployment is powerfully advocated, it would certainly be wrong for a British Government or a Railway Company to give a contract outside Great Britain merely because they saved a few pounds and thereby deprived a number of British workmen from getting their livelihood. The same thing would be done by Canada or France or Germany or Belgium and there is no reason why it should not be done by India."†

Mr. Jayakar further wrote :

"I can find no adequate reason why the Indian Legislature should be debarred from providing reasonable conditions regarding incorporation, capital, control and similar other requirements which would

* Para. 346. † Mr. Jayakar's Memorandum.

ensure that companies to be formed under British initiative or control should promote the development of Indian trade and industry and not hamper or restrict it in any way. The conditions to be imposed would be similar to those recommended by the External Capital Committee and would be applied only in the case of basic or national industries, key industries and infant industries."

The British Indian Delegation in their Memorandum also stated :

"We must state very frankly the apprehensions of Indian commercial and industrial interests in this matter. The particular difficulty which is disturbing the minds of Indian commercial men is the possibility of powerful foreign trusts establishing themselves in India and making it impossible for Indian industries to develop not necessarily by methods which in ordinary commercial practice would be regarded as unfair, but by their superior resources, powers of organisation, political influence, etc.... We see grave practical objections to any constitutional provisions against administrative discrimination. Indian Ministers in charge of Transferred Departments in the Provinces have exercised unrestricted powers in respect of contracts and the purchase of stores for the last twelve years and there has been no complaint from any British companies that the powers have been abused. Apart from the fact that any provision in the new Constitution which would enable the Governor-General or the Governor to interfere with the discretion of the Indian Ministers in these matters would be very strongly resented as an encroachment on the rights already granted by convention, we are convinced that administrative interference would in practice seriously affect the relations between the Governor-General or the Governor and his Ministers."*

The Committee of the Federation of Indian Chambers of Commerce and Industry expressed its opposition to and disapproval of the provisions in the Government of India Act against commercial discrimination and various provisions which militate against India's ability to lay down its own national economic policy. In a resolution passed on June 25th, 1938, it declared :—

"...All these disabilities, particularly the commercial safeguards are a serious limitation upon and handicap to the economic Swaraj which India wants *pari pasu* with the political Swaraj. In fact, the political Swaraj will be an empty husk without the economic Swaraj which should be deemed a condition precedent. It is the inherent right of every country to do all that is necessary to promote its trade, commerce and industry and shipping and in the exercise of this right to discriminate, wherever necessary, in favour of its nationals and national enterprise. The Federation, constituted as it is, has not been approved by any section in the country. Among the most radical alterations and amendments of the Government of India Act, the commercial community is strongly of opinion that the fundamental modification of the clauses relating to commercial safeguards and discrimination is absolutely essential."

British
India
Delegations
views

Federation
of Indian
Chambers
of Com-
merce and
Industry's
views

Indian National Congress's views

Indian nationalist opinion, as represented by the Indian National Congress, has also expressed itself by a resolution of that body against these clauses regarding prevention of discrimination. The resolution asserts the right of India to discriminatory treatment with the purpose of fostering her own industries and trade. Indeed the strongest objection against these provisions of the Act is that they do not provide an adequate scope for securing the development of Indian industries.

Again these provisions are not to be found in the Dominion Constitutions and are certainly incompatible with the grant of full legislative power to the Indian Legislatures. Yet Mr. G. N. Joshi thinks :

Safeguards

"These provisions are in the nature of safeguards to protect the interest of British citizens who have acquired vested interests in various spheres of India's life in the course of British rule in India. Having regard to the amount of capital invested by the British in India, and the position occupied by British professional men in Indian business, and by the practitioners in various professions, and also by the members of the Services, and finally having regard to the conception of partnership between the United Kingdom and India, which is mutually beneficial to both countries, these provisions are not only justified, but are considered essential and beneficial to India."*

Area declared by His Majesty to be under his jurisdiction

Some other Restrictions on the Powers of the Federal Legislature.— There are, in addition to the above, some other miscellaneous restrictions on the power of the Federal Legislature. The executive authority of the Federation and the power of the Federal Legislature do not extend to any area in a Federated State declared by His Majesty while accepting the Instrument of Accession that it should be administered by or on behalf of His Majesty provided that such a declaration shall not be made unless before the execution of the Instrument of Accession by the Ruler, notice has been given to him of His Majesty's intention to make such a declaration ; and also if His Majesty with the assent of the Ruler of the State gives up his powers and jurisdiction regarding any such area, this provision shall cease to apply to it. In that case the executive authority of the Federation and the legislative power of the Federal Legislature shall extend to that area subject to the provisions of this Act.† It is also provided that no member of the Federal or a Provincial

* The New Constitution of India, page 225.

† Sec. 294.

Legislature can be a member of any tribunal in British India having jurisdiction to entertain appeals or revise decisions in revenue cases.* No subject of His Majesty domiciled in India can on grounds of religion, place of birth, descent, colour, or any one of them be made ineligible for office under the Crown in India or can be prohibited on any such grounds from acquiring, holding, or disposing of property or carrying on occupation, trade, business or profession in British India; but this provision does not affect any law restricting the transfer of agricultural land from a member of an agricultural class to a non-member of such a class or to interfere with the existence of some right, privilege or disability attaching to members of a community by virtue of some personal law or custom. This provision also does not derogate from the Special Responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.† Again it is provided that no person can be deprived of his property in British India except by authority of law. Neither the Federal nor the Provincial Legislature has the power to make any law authorising the compulsory acquisition of land or any commercial or industrial undertaking or interest in such an undertaking unless such a law makes provisions for the payment of compensation for the property acquired or the mode in which this compensation is to be determined. Previous sanction of the Governor-General is necessary to any Bill or amendment which provides for the transference to public ownership of any land or modifying rights in land including revenue rights.‡ This provision is intended

" to safeguard holders of government grants or pensions against any possibility of vindictive treatment based on their former services to government.....The series of prohibitions take the place of the declaration of fundamental rights for which many Indians asked and which was discussed at the Round Table Conference."||

Apart from this, the Indian Constitution does not contain any specific declaration of fundamental rights of the individuals. The Indian demand for that was refused on the ground that "abstract declarations are useless unless there exist the will and the means to

* Sec. 296. † Sec. 298. ‡ Sec. 299. || Keith, A. B. : A Constitutional History of India, 382-383.

Member of the Legislature ineligible to be a member of a tribunal deciding revenue cases

Persons not to be subjected to disability by reason of race, religion, etc

Compulsory acquisition of land, etc.

No declaration of rights

make them effective." Moreover it was not possible to define the fundamental rights of the citizens on account of the peculiar position of the Indian States and the rights of their Rulers.

Bill may originate in any Chamber

Lapsing of the Bills

Holding of joint sittings of the Houses

General Procedure : Legislative.—It is provided that a Bill, other than a Finance Bill, may originate in either Chamber. A Bill shall not be deemed to have been passed by the Federal Legislature unless it has been agreed to by both Chambers without amendments or with such amendments only as may be agreed to by both Chambers. A Bill pending in the Legislature shall not lapse by reason of the prorogation of the Chambers. A Bill pending in the Federal Assembly, or which having been passed by the Federal Assembly is pending in the Council of State, shall lapse on the dissolution of the Assembly; but a Bill pending in the Council of State, but which has not been passed by the Federal Assembly shall not lapse on account of the dissolution of the Assembly.* The Governor-General may notify to the Chambers by message if they are in session or by public notification if they are not in session, his intention to convene a joint sitting of both the Chambers for the purpose of considering and voting on a Bill, if after it has been passed by one Chamber and is passed on to the other, it is rejected by the latter, or the Chambers have finally disagreed regarding certain amendments to the Bill, or six months have passed from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent. This is subject to the provision that if the Bill relates to finance or to any matter which touches the discharge of the functions of the Governor-General to be performed at his discretion or by the exercise of his individual judgment, the Governor-General, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay, may notify his intention of summoning the joint session of the Houses even if there has been no rejection or final disagreement in respect of the Bill and even if the period of six months has not elapsed. When the Governor-General has notified his intention to summon a joint sitting, neither Chamber can proceed with the Bill. But the Governor-General may at any time in the next session after

the expiration of six months from the date of his notification may summon the Chambers to meet in a joint sitting and the Chambers shall do so accordingly. If the Bill in question relates to finance or to a subject regarding which the Governor-General has to act in his discretion or in his individual judgment, the joint sitting may take place even in the same session. In these matters the Governor-General has been given the authority of acting in his discretion. At the joint session the Bill with amendments which are agreed to is to be considered to have been passed by both the Chambers if it is passed by a majority of the total number of members of both Chambers present and voting. At such sessions only such amendments may be made which are made necessary by the delay in the passage of the Bill, or which arise out of amendments, if any, proposed by one House but rejected by the other. The decision of the person, who is presiding as to which amendment is and which is not admissible, shall be final. The dissolution of the Assembly since the Governor-General's notification to summon the Chambers does not stand in the way of such a joint sitting. The President of the Council of State, or in his absence such person as may be determined by rules of procedure, is to preside at the joint sitting.*

Majority decisions to prevail

President of the Council of State to preside

When a Bill has been passed by both the Chambers, it shall be presented to the Governor-General who is empowered in his discretion to give his assent to it in His Majesty's name or to withhold his assent or to reserve it for the signification of His Majesty's pleasure. The Governor-General can also in his discretion return the Bill to the Chambers with a message requesting for the reconsideration of the Bill or some particular provisions of the Bill or any amendment he might suggest, and the Chambers shall proceed to reconsider the Bill as desired. A Bill which is reserved for the signification of His Majesty's pleasure shall not become an Act unless within twelve months from the day it was presented to the Governor-General, he declares publicly that His Majesty has been pleased to give his assent to it. Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day when the Governor-General's assent was given. In such cases the Governor-

Governor-General's power in relation to Bills

His Majesty's powers in relation to Bills

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Lapsing of the Bills

Holding of joint sittings of the Houses

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When a Bill has been passed by both the Chambers, it shall be presented to the Governor-General who is empowered in his discretion to give his assent to it in His Majesty's name or to withhold his assent or to reserve it for the signification of His Majesty's pleasure. The Governor-General can also in his discretion return the Bill to the Chambers with a message requesting for the reconsideration of the Bill or some particular provisions of the Bill or any amendment he might suggest, and the Chambers shall proceed to reconsider the Bill as desired. A Bill which is reserved for the signification of His Majesty's pleasure shall not become an Act unless within twelve months from the day it was presented to the Governor-General, he declares publicly that His Majesty has been pleased to give his assent to it. Any Act assented to by the Governor-General may be disallowed by His Majesty within twelve months from the day when the Governor-General's assent was given. In such cases the Governor-

Majority decisions to prevail

President of the Council of State to preside

Governor-General's power in relation to Bills

His Majesty's powers in relation to Bills

General shall at once make the disallowance known by public notification and the Act shall become void from that date.*

**The
Annual
Financial
Statement**

**Distinction
between
charged
and un-
charged
expendi-
ture**

**Expendi-
ture not
subject to
the vote of
the
Legislature**

**Expendi-
ture
charged on
the
revenues of
the
Federation**

Procedure in Financial Matters.—In every financial year the Governor-General shall cause to be laid before both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for that year, called "The Annual Financial Statement." The estimates of expenditure in this Statement shall separately show the sums required to meet expenditure charged by the Act upon the revenues of the Federation, and other sums required to meet other expenditure from the revenues of the Federation. The expenditure on Revenue Account is to be distinguished from other expenditure and the sums, if any, included solely because the Governor-General has directed their inclusion for the due discharge of his Special Responsibilities, are also to be indicated.

The expenditure which is charged on the revenues of the Federation is not subject to the vote of the Legislature while the other expenditure is subject to its vote. The following expenditure is charged on the revenues of the Federation:—

(a) the salary and allowances of the Governor-General and other expenditure relating to his office for which provision is made by Order-in-Council;

(b) debt charges for which the Federation is liable, including interest, sinking fund and redemption charges, expenditure relating to the raising of loans, and the service and the redemption of debt;

(c) the salaries and allowances of the Ministers, the Counsellors, the Financial Adviser, the Advocate-General, the Chief Commissioners, and the staff of the Financial Adviser;

(d) the salaries, allowances and pensions of the Judges of the Federal Court and those of the High Courts;

(e) the expenditure on defence, on ecclesiastical affairs amounting to not more than forty-two lakhs of rupees, exclusive of pension charges, and on external affairs, on tribal areas, and on the admini-

nistration of any other territory in the direction and control of which the Governor-General is required to act in his discretion;

(f) the sums payable to His Majesty out of the revenues of the Federation regarding expenses incurred in discharging the functions of the Crown in its relations with Indian States;

(g) grants for the administration of any areas in a Province which are for the time being Excluded Areas;

(h) any sums required to satisfy any judgment, decree, or award of any court or arbitral tribunal;

(i) any other expenditure declared by this Act or any Act of the Federal Legislature to be charged on the revenues of the Federation.*

The Governor-General shall decide in his discretion whether any proposed expenditure is charged or not charged on the revenues of the Federation. Except the salaries and allowances of the Governor-General and sums payable to His Majesty for the due discharge of his functions in relation with the Indian States, other charged expenditure can be discussed by either Chamber of the Legislature though no vote can be taken on it.†

Governor-General's decision to be final

The expenditure that is not charged shall be submitted first to the Federal Assembly and then to the Council of State in the form of demands for grants. Either Chamber shall have the power to assent or refuse to assent to any demand or reduce the amount of any demand. This, however, is subject to the provision that where the Assembly has refused any demand, it shall not be submitted to the Council of State unless the Governor-General so directs. If the Assembly has reduced the grant, the reduced grant shall be submitted to the Council of State unless the Governor-General otherwise directs.‡

Other estimates to be submitted in the form of demands for grants

The Governor-General cannot make the grant greater than it originally was. If the Chambers disagree regarding any demand, the Governor-General shall summon the two Chambers

* Sec. 33. † Sec. 34 (1). ‡ Sec. 34 (2).

**Joint sitting
of the Chambers**

**No demand
to be made
without the
recommendation
of the Governor-
General**

**Authentica-
tion of the
Schedule of
Authorised
Expenditure**

**Not open to
discussion or vote by
the Legisla-
ture**

**The legal
authority for
authorised
expenditure**

**Supplemen-
tary Esti-
mates**

**The recom-
mendation
of the Gover-
nor-General
for certain
kinds of Bills**

to a joint sitting and the decision of the majority of the members of both Chambers present and voting shall prevail. It is also laid down that no demand for a grant shall be made except on the recommendation of the Governor-General.* Thus the financial procedure is based on the sound principle that no proposal for any demand involving the imposition of taxes or the appropriation of public revenues can be made except when it is so recommended by the head of the Executive.

After the voting on the demands in both the Chambers, the Governor-General shall authenticate by his signature a Schedule specifying the grants made by the Chambers, and the sums charged on the revenues of the Federation but not exceeding in the case of any sum, the sum shown in the original Statement. But if the Governor-General thinks that the refusal or reduction of any grant by the Chambers affects the due discharge of any of his Special Responsibilities, he may include in the Schedule the additional amount not exceeding the amount of the rejected demand or the reduction. This Authenticated Schedule shall be laid before both the Chambers, but cannot be discussed or voted upon. This Authenticated Schedule constitutes the legal authority for expenditure for the year, and no expenditure from the revenues of the Federation shall be authorised unless it is specified in this Schedule.† If in any financial year further expenditure from the Federal revenues becomes necessary, the Governor-General shall cause to be laid before the Chambers a supplementary statement of the estimated expenditure, and the same procedure as applies to the original statement shall apply to it.‡

The Federal Legislature cannot consider, except on the recommendation of the Governor-General, any Bill or amendment which imposes or increases any tax, regulates the borrowing of money or giving of any guarantee by the Federal Government, or amends the law with respect to any financial obligations undertaken or to be undertaken by the Federal Government, or declares any expenditure charged on the revenues of the Federation or increases the amount of any charged expenditure. Such a Bill making such a

provision cannot be introduced in the Council of State. But any Bill or amendment providing for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or for services rendered, shall not be considered to offend against this provisions. Lastly if a Bill would involve expenditure from the revenues of the Federation, it shall not be passed by either Chamber unless the Governor-General has recommended its consideration.*

It is clear that the procedure above described is far from simple. Both Chambers enjoy almost equal powers except in the case of Financial Bills, which are to be introduced in the Assembly. The Governor-General, besides himself possessing powers for rejecting the Bill, can reserve it for His Majesty's pleasure. Not only that, the latter can disallow in the course of the year any Act assented to by the Governor-General. This is perhaps a very unnecessary safeguard, particularly the period of twelve months for the disallowance of the Act by the Crown is unreasonably long. Sir Samuel Hoare, however, defended it as a "piece of constructive conservatism." It shall also be noticed that the Upper House possesses important powers in the matter of supply, though this is opposed to British parliamentary practice. Regarding this Sir Tej Bahadur Sapru expressed his opinion that to allow the Upper Chamber the right of voting supply would amount to over-loading the Constitution with conservative influence and might conceivably have the effect of making the executive irremovable. Again serious objection is taken to the provision in respect of charged expenditure, which is over eighty per cent of the Federal revenue, because it is beyond the vote of the Legislature. Regarding the remaining twenty per cent, the Legislature can exercise its control, but even here any grant refused by it can be restored by the Governor-General provided it affects his Special Responsibility. The charged expenditure is a very effective safeguard and considerably limits and restricts the power and the competence of the Federal Legislature regarding finance. It is bound to stand in the way of the Federal Legislature when it may desire to initiate any new proposals involving considerable expenditure, and thus it may retard

Criticism

the progress of the country. The charged expenditure cannot be compared with the Consolidated Fund Charges in the United Kingdom as the items here are much more comprehensive involving extensive expenditure. Even the salaries of the Ministers are not subject to the vote of the Legislature, which is contrary to parliamentary practice.

Rule-making powers of the Chambers and the Governor-General

Rules of Procedure.—Each Chamber of the Legislature is authorised to make rules for regulating its procedure and the conduct of its business.* This is subject to the provision that the Governor General, after consultation with the President of the Council of State or the Speaker of the Federal Assembly, as by the case may be, may make rules for:—

(a) regulating the conduct of business in either Chamber regarding the discharge of functions, in respect of which he is required to act in his discretion or the exercise of his individual judgment:

(b) securing the timely completion of financial business:

(c) prohibiting the discussion of or asking of questions on any matter connected with any Indian State other than that regarding which the Federal Legislature has power to make laws for that State, unless in the opinion of the Governor-General the matter affects Federal interests or a British subject and has given consent for the discussion of the matter, or for the question to be put:

(d) prohibiting except with the consent of the Governor-General in his discretion the discussion of or the asking of questions on matters connected with relations between His Majesty or the Governor-General and any foreign State or Prince, or any matter connected with the Tribal Areas or the administration of any Excluded Area except in relation to estimates of expenditure, or on any action taken in his discretion by the Governor-General in relation to the affairs of a Province, or on the personal conduct of the Ruler of any Indian State, or of a member of the ruling family of any State. If any such rules made by the Governor-General are inconsistent with the rules made by a Chamber, the former shall prevail. The Governor-General is also empowered to make rules regarding the joint

The rules made by the Governor-General to prevail against rules made by the Chambers

sittings of the Chambers and the communications between them, after consultation with the President of the Council of State and the Speaker of the Legislative Assembly. Until these rules are made, the present rules shall prevail, subject to such modifications as may be made by the Governor-General in his discretion.* It is also provided that the validity of any proceedings in the Federal Legislature shall not be questioned on the ground of any alleged irregularity of procedure. No officer or other member of the Legislature who has got the power to regulate the conduct of business in the Legislature shall be answerable to any court regarding the exercise by him of the powers vested in him for the purpose.† The Act makes it clear that the requirements as to sanctions and recommendations by the Governor-General are to be regarded as matters of procedure only. Giving of such a sanction, where required, shall not be construed as precluding him from exercising subsequently in regard to the Bill in question any powers conferred upon him by this Act with respect to the withholding of assent to, or the reservation of, Bills. And no Act is to be considered invalid because some previous sanction or recommendation was not given.‡

Alleged irregularity of Procedure

Legislative Powers of the Governor-General.— It is clear from the above that the Governor-General is an integral part of the Federal Legislature. Besides possessing the powers to direct, control, stop, and reject Bills, he has certain special powers assigned to him in the domain of legislation. He has got power to promulgate Ordinances during the recess of the Legislature. It is laid down in the Act that if at any time when the Federal Legislature is not in session, and the Governor-General is satisfied that the circumstances exist which require immediate action by him, he may promulgate such Ordinances as the circumstances may require. But if the Ordinance is one which as a Bill containing the same provisions would have required the previous sanction of the Governor-General for introduction, he shall exercise his individual judgment. Further, if any such Ordinance as a Bill would have been reserved by him for His Majesty's pleasure, he shall not promulgate it without instructions from His

Powers to issue Ordinances when the Legislature is not in session

* Sec. 38. (2 & 3). † Sec. 41. ‡ Sec. 109. (1 & 2).

Majesty. Such an Ordinance shall have the same force and effect as an Act of the Federal Legislature passed in the usual way, but it shall be laid before the Federal Legislature and shall cease to have effect after the expiration of six weeks from the re-assembly of the Legislature, or, if before the expiration of that period resolutions are passed by both the Chambers disapproving it, upon passing of the second of those resolutions. It shall also be subject to the power of His Majesty to disallow ordinary Acts of the Federal Legislature and can also be withdrawn at any time by the Governor-General. Moreover such an Ordinance shall be legal only, if it makes provision which the Federal Legislature is competent to enact under this Act, otherwise it shall be void.*

**Powers of
issuing Or-
dinances at
any time**

The Governor-General has further powers to promulgate Ordinances at any time with regard to the subjects touching his functions to be discharged in his discretion or by his individual judgment. Such an Ordinance shall continue to operate up to six months or a lesser period as may be specified, but can be extended by another Ordinance for a further period not exceeding six months. It shall have the same force and effect as an Act of the Federal Legislature passed in the ordinary way but can be disallowed by His Majesty like an ordinary Act, and can be withdrawn at any time by the Governor-General. But if it is an Ordinance extending a previous Ordinance for a further period, it shall be communicated at once to the Secretary of State who shall place it before each House of Parliament. It shall be void if it touches a subject beyond the legislative competence of the Federal Legislature. The Governor-General is empowered to discharge the above-mentioned functions in his discretion.

**Powers to
enact Gov-
nor-General's
Acts**

Besides the power of issuing Ordinances of the kinds described above, the Governor-General has under certain circumstances powers to enact Acts, known as the Governor-General's Acts. If the Governor-General thinks that for the purpose of discharging his functions satisfactorily in respect of the matters subject to his discretion or to his individual judgment, it is essential that provision should be made by legislation, he may by message to both Chambers of the Legislature explain the circumstances

which make such legislation necessary, and enact forthwith a Governor-General's Act containing the necessary provisions, or attach to his message a draft of the Bill which he deems necessary. In the latter case, he may enact the Bill as a Governor-General's Act either in the same form or with necessary amendments after the expiration of one month, but before enacting the Act he shall consider any address presented to him by the Chambers or any amendments suggested by them within the stipulated period.

Such a Governor-General's Act has the same force and effect as an ordinary Act, and is subject to the powers of disallowance by His Majesty, and is void to the extent to which it is beyond the competence of the Federal Legislature. Every Governor-General's Act is to be communicated forthwith to the Secretary of State and shall be laid by him before each House of Parliament. The above-mentioned functions are to be performed by the Governor-General in his discretion.

Provisions in case of Failure of the Constitutional Machinery.—The Governor-General has been assigned powers to cope with a contingency arising out of the failure or break-down of the constitutional machinery. It is provided* that if at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may issue a Proclamation declaring that his functions to the extent as may be specified shall be exercised by him in his discretion and also he may thereby assume to himself all or any of the powers of any Federal body or authority, except the Federal Court whose powers cannot be assumed by the Governor-General under the Act. Such a Proclamation can be revoked or changed by a subsequent Proclamation. But such a Proclamation shall be communicated forthwith to the Secretary of State to be laid before both Houses of Parliament and unless it is a Proclamation revoking a previous Proclamation, it shall cease to operate at the expiry of six months. This is subject to the provision that, if and so often as both the Houses of Parliament approve its continuance, it shall remain in force for a further period of twelve months.

Address or amendment by the Legislature

To be communicated to the Secretary of State

Power of the Governor-General to issue Proclamations

Proclamation to be communicated to the Secretary of State to be laid before Parliament

Duration

* Sec. 45.

Reversion to
the other
provisions of
the Act

If, however, the government of the Federation has been carried on by virtue of such a Proclamation for a period of three years, the Proclamation shall cease to operate at the end of that period, and the government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment made by the Parliament. The Parliament, however, can make amendment in this Act only where it is empowered to do so without affecting the accession of a State. Any law made by the Governor-General during the period, when by a Proclamation he has assumed any power of the Federal Legislature to make laws, shall continue to operate until two years have passed from the date when the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the appropriate Legislature. The Governor-General shall exercise these functions in his discretion.

Effect of
vesting the
Governor-
General with
special legis-
lative
powers

Thus it is clear that the Governor-General has been vested with extraordinary powers of legislation with the result that the position of the Federal Legislature has been reduced in the ultimate resort to almost a nullity. The Governor-General, when he may think proper, can issue Ordinances on the advice of his Ministry and even without its advice. He can issue Governor-General's Acts over the head of the Legislature and even against the advice of his Ministry, if it may come to that. In the last resort he can take charge completely or partially of the whole Federal machinery except the Federal Court. Thus his powers are complete and no loophole has been left by the framers of the Act for a hostile Legislature or a Ministry to cause mischief or in the last resort to go against the wishes of the Governor-General.

The Joint Parliamentary Committee wrote in this connection:—

"It is plain that purely executive action may not always suffice for the due discharge of the Governor's (and for the matter of that, the Governor-General's) special responsibilities, in some circumstances it may be essential that further powers should be at his disposal."*

Such circumstances may arise when the Legislature is not in session and the Ministry itself desires

J. P. C.'s
views

* Para. 103.

that an Ordinance should be issued by the Governor-General to meet a particular contingency. The Joint Parliamentary Committee observed on the point:

"But we notice that the White Paper also proposes that the Governor shall have power to make ordinances for the good government of the Province at any time when the Legislature is not in session, if his Ministers are satisfied that an emergency exists which renders such a course necessary. Such an ordinance is to be laid before the Provincial Legislature and will cease to operate at the expiration of six weeks from the date of the re-assembly of the Legislature unless in the meantime the Legislature has disapproved it by resolution in which case it will cease to operate forthwith."*

Ordinances
on the
advice of the
Ministry

These remarks apply to the Governor-General's powers as well. No objection can be taken to this on constitutional grounds or on political grounds. It is necessary to arm the Ministry with powers to approach the Governor-General for such an Ordinance, which it may deem necessary to meet any unforeseen or sudden contingency at a time when it cannot go to the Legislature for the simple reason that it is not in session.

But the Governor-General has also got powers to issue Ordinances on his own responsibility, which shall be valid for not more than six months in the first instance but are renewable once for a similar period. This power is in keeping with the scheme of the Act under which the Governor-General has to perform certain functions in his discretion or by the exercise of his individual judgment. He must be empowered to do so under all circumstances and conditions, and without restrictions as far as the Indian Legislature is concerned. But Indian nationalist opinion takes objection to the Governor-General's Special Responsibilities and, therefore, does not look with favour on the special powers of issuing Ordinances given to him. Certainly it is a very drastic safeguard against any encroachment that might be made by the Federal Legislature on the sphere of Special Responsibilities of the Governor-General. Moreover it empowers the Governor-General to give effect to his desires in respect of his Special Responsibilities, if the Ministry and the Legislature refuse to act as desired by him. There is, however, one check on the power of the Governor-General in this sphere as he is to communicate an Ordinance of this kind to the Secretary of State who is required

Ordinance
without the
advice of the
Ministry

To be
communicated to the
Secretary of State

to lay it before Parliament. This means that the Governor-General shall have to secure the concurrence of the Secretary of State and the British Parliament, while issuing such Ordinances.

Governor-General's power to issue Acts

Strong objection, however, is taken to the power of the Governor-General to enact Governor-General's Acts, besides his power of issuing Ordinances. This has probably been done to empower the Governor-General to place more permanent measures on the Statute Book regarding matters within the sphere of his discretion or individual judgment than he could do by Ordinances. Although the Legislature may be consulted about the provisions of the Bill to be so enacted, yet it is not obligatory on the part of the Governor-General either to accept the advice of the Legislature or even to submit the Bill to it.

Failure of the ordinary constitutional machinery.

Lastly, the Governor-General has been vested with extraordinary powers to deal with the situation, when the ordinary constitutional machinery has broken down. The Joint Parliamentary Committee observed in this connection :

"Events in more than one Province since the reforms of 1919 have shown that powers of this kind are unhappily not yet unnecessary, and it is too soon to predict that even under responsible government their existence will never be necessary..... We conceive that the intention is to provide also for the possibility of a partial breakdown and to enable the Governor (or the matter of that the Governor-General) to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law. Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him; we are speaking of course, of such a case as the refusal of the Legislature to function at all and not merely of lesser conflicts or disputes between it and the Governor..... A constitutional breakdown implies no ordinary crisis and it is impossible to foresee what measures the circumstance may demand. It is right, therefore, that the Governor should be armed with the general discretionary power to adopt such remedies as the case may require." *

The danger of constitutional breakdown

There is no denying the fact that the danger of a constitutional breakdown is real and must be provided against. The provisions in the Act seem to be comprehensive and quite capable of meeting any situation. But even in spite of them, constitutional breakdown may come and can be made effective for the purpose of, what has been called, the wrecking of the Constitution. It is clear that when the govern-

* Para. 109.

ment of the country is not being carried on in the ordinary way in accordance with the provisions of the Act, the Constitution is practically wrecked, though the King's Government may be carried on by the extraordinary powers of the Governor-General. If such a constitutional breakdown comes, and the political party responsible for it is backed by the electorate and public opinion in the country and is assured of a permanent majority, it can put a considerable pressure on the Governor-General. The latter shall have either to bow before that party or carry on in his own way for the maximum period of three years unless in the meanwhile he can find some other party to provide a Council of Ministers enjoying the confidence of the Legislature. If he cannot do that, after three years there must be a return to the ordinary provisions of the Act subject to any modifications or amendments made by the Parliament. If, however, by that time the political party responsible for the crisis is not satisfied, it may mean the continuation of the constitutional breakdown, provided that party still retains its majority. Thus even in spite of these provisions a breakdown can be made effective, though it would be very difficult for a particular party to maintain its majority and its backing in the country for such a long time.

It may be noted that such extraordinary powers of the Governor-General are unknown to the British and Dominion Constitutions. The emergency powers, which the executive possesses in these countries, are to be exercised generally on the advice of the Ministry and not independently of it. Thus these powers establish the independence of the executive in India, which is a negation of the principles of responsible government.

The Ministry *vis-a-vis* the Legislature.—The Ministry's responsibility to the Legislature is not expressly laid down in the Act, though the Governor-General has been instructed in his Instrument of Instructions to assure that. Thus it will be a matter exclusively of constitutional convention. The Federal Legislature has not even the power to change the salaries of the Ministers, if once it has determined them. This means that it cannot show its no-confidence in the Ministers by the recognized constitutional practice of refusing the salaries of the Ministers. The only important provision that establishes the connection

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Breakdown
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Independ-
ence of the
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sibil-
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of the Ministers with the Legislature is that they must be members of either Chamber, or if they are not, they must become so within six months. The Ministry, in actual practice, will be more or less the nominee of the Governor-General and shall be bound to depend upon him for guidance and support particularly because the composition of the Federal Legislature is likely not to give any decisive majority to any political party.

Responsibility of the Ministry to both Houses

Lastly, it should be noted that the Ministry is responsible to both Houses of the Legislature. This means that the position of the Ministry would become very difficult, if it loses the confidence of one House while retaining the confidence of the other. In this case Sir Samuel Hoare suggested that there should be recourse to a joint session for the purpose of obtaining a vote of confidence. He added :

"I think it must depend upon as to whether or not the Government could carry on with the support of one House and if whether it would ask for a dissolution, or whether in a particular case there would be a demand for a joint session. It is impossible to give one general answer to a question that really covers a number of different kinds of contingencies."

In this connection it should not be forgotten that there can be no dissolution of the Upper House, therefore if the Ministry has lost its confidence it cannot make any appeal to the electorate by force of dissolution of that House. The Upper House, therefore, possesses greater powers in this connection than the Lower House, though this is against the recognized constitutional practice.

Halting and Dubious

Central Responsibility.—It will be realized from the study of this Chapter, that the responsibility at the centre is not based on any provision in the Act. It develops as a matter of constitutional convention, is the earnest hope and desire of all well-wishers of the country, it will not be complete. It will be halting, dubious, and limited by the various financial and legislative safeguards.

APPENDIX III

FEDERAL LEGISLATIVE LIST

1. His Majesty's naval, military and air forces borne on the Indian establishment and any other armed force raised in India by the Crown, not being forces raised for employment in Indian States or military or armed police maintained by Provincial Governments; any armed forces which are not forces of His Majesty, but are attached to or operating with any of His Majesty's naval, military or air forces borne on the Indian establishment; Central Intelligence Bureau; preventive detention in British India for reasons of State connected with defence, external affairs, or the discharge of the functions of the Crown in its relations with Indian States.

2. Naval, military and air force works; local self-government in cantonment areas (not being cantonment areas of Indian State troops), the regulation of house accommodation in such areas and, within British India, the delimitation of such areas.

3. External affairs; the implementing of treaties and agreements with other countries; extradition, including the surrender of criminal and accused persons to parts of His Majesty's dominions outside India.

4. Ecclesiastical affairs, including European cemeteries.

5. Currency, coinage and legal tender.

6. Public debt of the Federation.

7. Posts and telegraphs, including telephones, wireless, broadcasting, and other like forms of communication; Post Office Savings Bank.

8. Federal Public Services and Federal Public Service Commission.

9. Federal pensions, that is to say, pensions, payable by the Federation or out of Federal revenues.

10. Works, lands and buildings vested in, or in the possession of, His Majesty for the purposes of the Federation (not being naval, military or air force works), but, as regards property situate in a Province, subject always to Provincial legislation, save in so far as Federal law otherwise provides, and, as regards property in a federated State held by virtue of any lease or agreement with that State, subject to the terms of that lease or agreement.

11. The Imperial Library, the Indian Museum, the Imperial War Museum, the Victoria Memorial, and any similar institution controlled or financed by the Federation.

12. Federal agencies and institutes for the following purposes, that is to say, for research, for professional or technical training, or for the promotion of special studies.

13. The Benares Hindu University and the Aligarh Muslim University.

14. The Survey of India, the Geological, Botanical and Zoological Surveys of India; Federal meteorological organizations.

15. Ancient and historical monuments; archaeological sites and remains.

16. Census.

17. Admission into, and emigration and expulsion from, India, including in relation thereto the regulation of the movements in India of persons who are not British subjects domiciled in India, subjects of any Federated State, or British subjects domiciled in the United Kingdom : pilgrimages to places beyond India.
18. Port quarantine, seamen's and marine hospitals, and hospitals connected with port quarantine.
19. Import and export across customs frontiers.
20. Federal railways : the regulation of all railways, other than minor railways in respect of safety, maximum rates and fares, station and service terminal charges, interchange of the traffic and the responsibility of railway administrations as carriers of goods and passengers : the regulation of minor railways in respect of safety and the responsibility of the administrations of such railways as carriers of goods and passengers.
21. Maritime shipping and navigation on tidal waters : Admiralty jurisdiction.
22. Major ports, that is to say, the declaration and delimitation of such ports, and the constitution and powers of Port Authorities therein.
23. Fishing and fisheries beyond territorial waters.
24. Aircraft and air navigation : the provision of aerodromes : regulation and organization of air traffic of aerodromes.
25. Lighthouses, including lightships, beacons and other provision for the safety of shipping and aircraft.
26. Carriage of passengers and goods by sea or by air.
27. Copyright, inventions, designs, trademarks and merchandise marks.
28. Cheques, bills of exchange, promissory notes and other like instruments.
29. Arms : firearms : ammunition.
30. Explosives.
31. Opium, so far as regards cultivation and manufacture, or sale for export.
32. Petroleum and other liquids and substances declared by Federal law to be dangerously inflammable, so far as regards possession, storage and transport.
33. Corporations, that is to say, the regulation and winding up of trading corporations, including banking, insurance and financial corporations, but not including corporations owned or controlled by a Federated State and carrying on business only within that State or co-operative societies, and of corporations, whether trading or not, with objects not confined to one unit.
34. Development of industries, where development under Federal control is declared by Federal law to be expedient in the public interest.
35. Regulation of labour and safety in mines and oilfields.
36. Regulation of mines and oilfields and mineral development to the extent to which such regulation and development under Federal control is declared by Federal law to be expedient in the public interest.
37. The law of insurance, except as respects insurance undertaken by a Federated State, and the regulation of the conduct of insurance business, except as respects business undertaken by a Federated State : Government insurance, except so far as undertaken by a Federated State, or, by virtue of any entry in the Provincial Legislative List or the Concurrent Legislative List, by a Province.
38. Banking, that is to say, the conduct of banking business by corporations other than corporations owned or controlled by a Federated State and carrying on business only within that State.

39. Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner, as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit.

40. Elections to the Federal Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.

41. The salaries of the Federal Ministers, of the President and Vice-President of the Council of State and of the Speaker and Deputy Speaker of the Federal Assembly; the salaries, allowances and privileges of the members of the Federal Legislature; and to such extent as is expressly authorised by Part II of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Legislature.

42. Offences against laws with respect to any of the matters in this list.

43. Inquiries and statistics for the purposes of any of the matters in this list.

44. Duties of customs, including export duties.

45. Duties of excise on tobacco and other goods manufactured or produced in India except—

- (a) alcoholic liquors for human consumption;
- (b) opium, Indian hemp and other narcotic drugs and narcotics; non-narcotic drugs;
- (c) medicinal and toilet preparations containing alcohol, or any substance included in sub-paragraph (b) of this entry.

46. Corporation tax.

47. Salt.

48. State lotteries.

49. Naturalization.

50. Migration within India from or into a Governor's Province or a Chief Commissioner's Province.

51. Establishment of standards of weight.

52. Ranchi European Mental Hospital.

53. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list and, to such extent as is expressly authorized by Part IX of this Act, the enlargement of the appellate jurisdiction of the Federal Court, and the conferring thereon of supplemental powers.

54. Taxes on income other than agricultural income.

55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies.

56. Duties in respect of succession to property other than agricultural land.

57. The rates of stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, proxies and receipts.

58. Terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights.

59. Fees in respect of any of the matters in this list, but not including fees taken in any Court.

APPENDIX IV CONCURRENT LEGISLATIVE LIST

PART I

1. Criminal law, including all matters included in the Indian Penal Code at the date of the passing of this Act, but excluding offences against laws with respect to any of the matters specified in the Federal Legislative List or the Provincial Legislative List and excluding the use of His Majesty's naval, military and air forces in aid of the civil power.
2. Criminal Procedure, including matters included in the Code of Criminal Procedure at the date of the passing of this Act.
3. Removal of prisoners and accused persons from one unit to another unit.
4. Civil Procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of the passing of this Act; the recovery in a Governor's Province or a Chief Commissioner's Province of claims in respect of taxes and other public demands, including arrears of land revenue and sums recoverable as such, arising outside that Province.
5. Evidence and oaths; recognition of laws, public acts and records and judicial proceedings.
6. Marriage and divorce; infants and minors; adoption.
7. Wills, intestacy, and succession, save as regards agricultural land.
8. Transfer of property other than agricultural land; registration of deeds and documents.
9. Trusts and Trustees.
10. Contracts, including partnership, agency, contracts of carriage, and other special forms of contract, but not including contracts relating to agricultural land.
11. Arbitration.
12. Bankruptcy and insolvency; administrators-general and official trustees.
13. Stamp duties other than duties or fees collected by means of judicial stamps, but not including rates of stamp duty.
14. Actionable wrongs, save in so far as included in laws with respect to any of the matters specified in the Federal Legislative List or the Provincial Legislative List.
15. Jurisdiction and powers of all courts, except the Federal Court, with respect to any of the matters in this list.
16. Legal, medical and other professions.
17. Newspapers, books and printing presses.
18. Lunacy and mental deficiency, including places for the reception or treatment of lunatics and mental defectives.
19. Poisons and dangerous drugs.
20. Mechanically propelled vehicles.
21. Boilers.
22. Prevention of cruelty to animals.
23. European vagrancy; criminal tribes.
24. Inquiries and statistics for the purpose of any of the matters in this Part of this List.
25. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

PART II

26. Factories.
27. Welfare of labour ; conditions of labour ; provident funds ; employers' liability and workmen's compensation ; health insurance, including invalidity pensions ; old age pensions.
28. Unemployment insurance.
29. Trade unions, industrial and labour disputes.
30. The prevention of the extension from one unit to another of infectious or contagious diseases or pests effecting men, animals or plants.
31. Electricity.
32. Shipping and navigation on inland waterways as regards mechanically propelled vessels, and the rule of the road on such waterways ; carriage of passengers and goods on inland exhibition.
33. The sanctioning of cinematograph films by exhibition.
34. Persons subject to preventive detention under Federal authority.
35. Inquiries and statistics for the purpose of any of the matter in this Part of this List.
36. Fees in respect of any of the matters in this Part of this List, but not including fees taken in any Court.

CHAPTER VII

RESPONSIBLE GOVERNMENT IN THE PROVINCES THE PROVINCIAL EXECUTIVE

The Governors' Provinces ; Berar ; Creation of New Provinces ; Provincial Autonomy ; the Provincial Executive—the Governor ; the Administration of Provincial Affairs ; the Provincial Executive—the Council of Ministers ; Special Responsibilities of the Governor ; Powers of the Governor with reference to Law and Order ; Rules for the conduct of business ; Advocate-General for the Province ; Governor's Secretarial Staff ; Protection of the Governor ; Instrument of Instructions ; Superintendence of the Governor-General ; the Powers of the Governor ; Importance of the office of the Governor ; Comparison and Contrast between the positions of the Governor and the Governor-General.

The Governors' Provinces.—The British Indian Provinces form the important units of the proposed Federation of India along with the Chief Commissioners' Provinces and the Federated Indian States. Under the Act* the following are recognized to be the Governors' Provinces :—

Madras, Bombay, Bengal, United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, Sind, and such other Governors' Provinces as may be created under this Act. Burma has ceased to be a part of India.†

The Governors' Provinces

Berar.—There are special provisions‡ in the Act regarding Berar. It is still recognized to be under the sovereignty of His Exalted Highness the Nizam of Hyderabad, but by virtue of an Agreement between His Majesty and the Nizam, it is to be administered together with the Central Provinces as one Governor's Province under this Act. Thus as long as this Agreement is in force, Berar and the Central Provinces shall be considered to be one Governor's Province, under the name of the Central Provinces and Berar, though Berar shall continue to be under the sovereignty of His Exalted Highness the Nizam. The Berari subjects are to be treated as His Majesty's subjects for all intents and purposes except for the purpose of any oath of allegiance. It is also laid

Special Provisions regarding Berar

Berar—a part of the Governor Province the Central Province

* Sec 46 (1). † Sec. 46 (2). ‡ Sec. 47.

down that any provisions made under this Act with respect to the qualifications of the voters for the Provincial Legislature of the Central Provinces and Berar or the voters for the Council of State, shall be such as to give effect to any provisions with respect to those matters contained in the Agreement between His Majesty and the Nizam. In the absence of such an Agreement, His Majesty in Council may make the necessary modifications in the provisions of this Act relating to the Central Provinces as he thinks proper, and in that case, references in this Act to the Central Provinces and Berar shall be deemed as references to the Central Provinces alone.

The territory of Berar was assigned by the Nizam in 1853 to the exclusive management of the British Resident at Hyderabad and to such other officers acting under his orders as might be appointed from time to time by the Government of India. This was done to pay off certain expenses in connection with the subsidiary forces to be maintained at Hyderabad. Another treaty in 1860 laid down that the Berar and certain other territory was to be held by the British Government in trust for the payment of the Hyderabad contingent. In 1902 a permanent Agreement was arranged, by which the Nizam's sovereignty over the area remained un-impaired but he agreed to lease the districts to the British Government in perpetuity for a payment to him by the British Government of the fixed rent of 25 lacs of rupees. The British Government, however, was free to administer this territory in any way it pleased. Under the Government of India Act, 1919, Berar was administered with the Central Provinces but not as a part of it. The Beraris were allowed to elect their representatives for the Central Legislature as well as the Provincial Legislature, who were then formerly nominated as members of those Legislatures. Central as well as Provincial Laws were applied to Berar through Orders in Council under the Foreign Jurisdiction Act.

In 1936 a new Agreement was signed between His Majesty and the Nizam which replaced the Agreement of 1902. This Agreement recognizes the sovereignty of the Nizam over Berar so that he and his successors shall be known as "His Exalted Highness the Nizam of Hyderabad and Berar," while the Heir-Apparent of the Nizam has been granted the title of "His Highness the Prince of Berar."

Certain rights have been granted to the Nizam, such as the right to be consulted in respect of the appointment of the Governor of the Central Provinces and Berar, the flying of his flag side by side with the British flag in Berar, the grant of Hyderabad titles to the people of Berar, holding of royal Durbars in Berar and maintenance of an agent at the capital of the Government of the Central Provinces and Berar. The Khutba may be read in any mosque in Berar in the name of His Exalted Highness. The latter is also to receive the sum of 25 lakhs per annum as before. It is also agreed that the Governor of the Central Provinces and Berar in declaring his assent in His Majesty's name to any Bill passed by the Provincial Legislature and applying to Berar, and in notifying His Majesty's assent to any such Bill is required to state that the required assent has been given by virtue of the assent by His Exalted Highness as far as Berar is concerned. This Agreement is not subject to the jurisdiction of the

Previous
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Federal Court. The provisions of Section 6 of the Government of India Act, 1935 pertaining to the accession of the Indian States to the Federation of India, are not applicable to it. Lastly, the coming into effect of the Agreement is not made to depend on the accession of the Nizam to the Federation.

Creation of New Provinces.—It shall be noticed from the above that some new Governors' Provinces have been created under the Act. These new Provinces are Sind, which has been separated from the Presidency of Bombay, and Orissa which has been created by separating certain areas from the Provinces of Bihar and Orissa, Madras, and the Central Provinces.* As a result of the separation of Orissa from what was previously known as the Province of Bihar and Orissa, the latter is known as the Province of Bihar. Provision has also been made in the Act for the creation of new Provinces in addition to those which have been recognized under the Act and for altering the boundaries of the existing Provinces. His Majesty may by an Order in Council create a new Province, increase the area of any Province, and diminish or alter the boundaries of any Province. But before the draft of an Order in Council effecting this is placed before the Parliament, the Secretary of State is required under the directions of His Majesty to ascertain the views of the Federal Government, the Chambers of the Federal Legislature, and the Government and the Chamber or Chambers of the Legislature of any Province affected by the Order. Such an Order can change the representation in the Federal Legislature of any Governor's Province affected by it, the composition of the Legislature of that Province, and may also include provisions regarding apportionments and adjustments of assets and liabilities, and such other provisions as may be considered necessary. Such an Order, however, cannot change the total membership of either Chamber of the Federal

Sind and
Orissa

Provisions
regarding
the creation
of new Pro-
vinces and
altering the
boundaries
of the exist-
ing Pro-

*The following areas are included in the new Province of Orissa :

From Bihar and Orissa—The Orissa Division.

From the Presidency of Madras—The Ganjam Agency Tracts ; certain areas in the non-Agency portion of the Ganjam district including the taluks of Ghumsur, Aska, Surada, Kodala, Chatrapur, and a part of the taluks of Ichapur, and Berhampur ; a part of the Parlakimedi Estate ; the Jeypore (Imparible) Estate, and a part of the Pottangi taluk, not included in that estate.

From the Central Provinces—The Khariar Zamindari in the Raipur district ; and the Padampur Tract in the Bilaspur district.

Chief
Commissioners' Provinces

Legislature. The boundaries of the Chief Commissioners' Provinces can also be varied in the same way.*

Provincial Autonomy.—The Government of India Act, 1935, has introduced great changes regarding the status and power of the Governors' Provinces. The administrative structure established by the Government of India Act, 1919, is changed beyond recognition in as much as dyarchy is abolished, giving place to almost complete transfer of power to popular control and the establishment of Provincial Autonomy. According to the J. P. C., the scheme of Provincial Autonomy

" Is one whereby each of the Governors' Provinces will possess an Executive and a Legislature having exclusive authority within the Province in a precisely defined sphere, and in that exclusively provincial sphere broadly free from control by the Central Government and Legislature."†

Under the scheme of the Act, the Central Government and the Central Legislature, generally speaking, in normal conditions cease to possess in the Governors' Provinces any legal power or authority with respect to any matter falling within the exclusive provincial sphere, though the Governor-General in virtue of his power of supervising the Governors' work subject to the latter's discretion or individual judgement has authority to secure compliance in certain respects with directions which he may issue. The J. P. C. supported the idea of Provincial Autonomy and wrote :

" Of all the proposals in the White Paper, Provincial Autonomy has received the greatest measure of support on every side. The economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province can find vigorous and adequate expression, free from interference by a remote Central Government.‡

The scheme which the Committee propounded and which has been adopted in the Act vests the executive authority in the provincial sphere in the Governor as the representative of His Majesty. The Governor in the exercise of his functions is to be aided and advised within certain limitations by a

* Sec. 290.

† Para. 48. ‡ Para. 49.

J. P. C.'s
scheme
for
Provincial
Autonomy

Council of Ministers. According to the strict interpretation of the Act the sphere of the administration, subject to the sole discretion of the Governor and constituting his Special Responsibilities, is beyond the Sphere of constitutional responsibility of the Ministers, though in the sphere of Special Responsibilities, the Ministers may tender their advice which the Governor may or may not accept. In actual practice, however, a sort of workable understanding has been arranged by which almost whole of the administration has been subjected to the constitutional responsibility of the Council of Ministers, though the final authority of the Governor to exercise his individual judgment or discretion is kept in tact. The Provinces have also been given separate Legislatures consisting, in certain cases, of one Chamber and in others, of two Chambers. The Provinces have also got their almost independent Judiciary and Public Services. In short, each of the major Provinces has been given a unitary government under a Governor who is expected to act on the constitutional advice of his Ministers, who in their turn are to act on the well-known principles of ministerial responsibility, though this is not expressly stated in the Act. Thus it may be said that under the Act complete Provincial Autonomy, subject to certain safe-guards, has been established in the Provinces.

The General Scheme of Provincial Autonomy

The Provincial Executive : The Governor.—The executive authority of the Province is exercised under the Act on behalf of His Majesty by the Governor either directly or through officers, subordinate to him.* The Governor is appointed by His Majesty by a Commission under the Royal Sign Manual.† The salaries of the Governors are fixed by the Act. The Third Schedule to the Act provides for the annual salaries of the Governors of the various Provinces as follows:—

The Governor

The Governor of Madras; the Governor of Bombay; the Governor of Bengal . . . 120,000 rupees.

Appointment

Salaries

The Governor of the United Provinces; the Governor of the Punjab; the Governor of Bihar . . . 100,000 rupees.

The Governor of the Central Provinces and Berar 72,000 rupees.

* Sec. 40 (1) + Sec. 48 (1)

The Governor of Assam ; the Governor of the North-West Frontier Province ; the Governor of Orissa ; the Governor of Sind 66,000 rupees.

Allowances

The Governor of the Punjab

It is also provided that the Governors shall receive such allowances for expenses in respect of equipment and travelling upon appointment and during their terms of office as may from time to time be fixed by His Majesty in Council. In accordance with this provision, an Order in Council known as the Government of India (Governors' Allowances and Privileges) Order, 1935, has been made providing for the allowances and privileges, etc., of the Provincial Governors. Under this Order in Council, the Governor of the Punjab, is entitled throughout the term of his office to the use, without payment of rent, of his official residences, official railway saloons, river craft, aircraft, and motor cars provided for his use, and no charge can fall on him personally on account of their maintenance. He can receive from time to time an allowance equal to actual expenses in renewing the furnishing of his official residences, but this amount is not to exceed Rs. 30,000 for twelve months. His leave allowance amounts to Rs. 4,000 per month, but the Secretary of State may on account of any special reason, increase it to not more than Rs. 5,500 per month. If resident in Europe at the time of appointment, he is entitled to receive £1,500 as an equipment and travelling allowance and £300 as travelling allowance on appointment. If he is resident in India or Ceylon at the time of appointment and is not in the service of the Crown at that time, he is entitled to receive £550 as equipment allowance and £300 as travelling allowance on appointment. If he is transferred from the Governorship of another Province, he is entitled to receive equipment allowance of £160 and actual travelling expenses if he is not transferred from Madras, Bengal or Bombay. These sums are to be charged on and paid out of the revenue of the Province. Besides he is entitled to certain customs privileges. It is also provided in the Third Schedule to the Act that an acting Governor shall also be entitled to receive the same salary as the original incumbent, but he is not entitled to the furnishing allowance or to the leave allowance, though he is entitled to receive a travelling allowance equal to his actual travelling expenses.

The executive authority of the Province extends to matters in respect of which the Provincial Legislature has power to legislate, subject to the provisions of this Act.* It is to be exercised by the Governor, but he derives it directly from His Majesty. This constitutional change was necessary in view of the new and the independent status of the Provinces who are autonomous under the Act. The Provinces now derive their powers directly from the Crown and not from the Central Government as agents or delegates. This is in accordance with the true federal principle, but the Governors of Indian Provinces resemble more the Governors of the States of the Commonwealth of Australia than the Lieutenant-Governors of the Canadian Provinces, who are appointed and removed by the Governor-General of Canada, while the former are directly appointed by the King.

Considerable importance is attached to the appointment of Governors in India. So far these dignitaries have belonged to two classes. The Governors of the Presidencies of Madras, Bengal, and Bombay have generally been chosen directly from England from the class of British aristocratic politicians, and the Governors of other Provinces have been promoted from the rank of senior Civil Service men in India. Indian opinion has always been against I. C. S. Governors because on account of their connection with the steel-frame of the Service, they are believed to develop a mentality, which is by no means sympathetic to the aspirations of the Indians. According to Mr. S. K. Shah :

"The traditions of the Indian Civil Service require that an officer in that *Corps d'elite* should not be restricted either to one province or to one department of the Public Service. From them to expect any special qualification, aptitude or sympathy fitting the holder of such attributes to be a Governor of a Modern Province, is a hope more and more doomed to disappointment by the logic of events. Besides, such Public Servants, in the course of their service, inevitably come to contract prejudices and sympathies which would not permit them to claim the one quality of absolute impartiality that was in the last century claimed to be their distinguishing feature."†

Perhaps these remarks apply equally to the Indian born members of the Indian Civil Service, who develop a similar mentality. On account of these reasons Indian opinion has always preferred a Governor fresh

Executive authority of the Province

Exercise of the executive authority

Appointment of Governors; Indian point of view

I. C. S. Governors

Indian view

* Sec. 49 (2).

† "How India is Governed," Page 20.

**Indians as
Governors**

from England to an I. C. S. man. But more than this, Indians now are in favour of the appointment of their own countrymen as Governors of the Provinces, as they see no reason why Indians should be shut out from that office. As a matter of fact, some acting vacancies have already been given to Indians, and there is no reason to suppose that the latter have failed to discharge their duties properly. Another point should be noted in this connection. Before the introduction of Provincial Autonomy on April 1st, 1937, the Provincial Governors were generally appointed from among the senior members of the Provincial and the Central Executive Councils, whose membership was open to the senior members of the Civil Service. Now that these Councils have been or will be abolished, the civilians in the Provinces can hope to become only Secretaries to the Government and no higher job is open to them. These Secretaries are subordinate servants of the Ministers, and it is not desirable to appoint them as Governors, who are the constitutional heads of the Ministers. In April, 1938, objection was taken to such an appointment in Orissa when Mr. A. R. Dain, who was an official of the Government of Orissa and therefore a subordinate of the Ministers, was proposed to be appointed the acting Governor of Orissa. Matters assumed serious proportions so that the Ministry declared its intention to resign, if this appointment was not cancelled. In this attitude it was supported by the High Command of the Indian National Congress. Even Mahatma Gandhi gave his support. He wrote on April 29 on the subject :

**Constitutional
crisis in
Orissa****Mahatma
Gandhi's
view**

"The appointment of Mr. Dain, a subordinate of the Orissa Government to be acting Governor, threatens to precipitate a crisis of the first magnitude. The matter looked small on the surface. The fact that he is to retire after termination of acting appointment has been regarded as sufficient atonement for an admitted mistake. In my opinion it is no atonement. If he is reverted to his original permanent post, not only would there be anything wrong, but if the Ministers wanted to be churlish they might take a secret delight in their quondam acting Governor becoming their subordinate. The whole of the sting lies in a subordinate official becoming an acting Governor of his province with whom the Ministers are expected to work and almost daily submit documents for his signature and have him to preside over their meetings. It is incongruous and unbecoming and reduces autonomy to a farce"

Solution

The threatened crisis was averted when the permanent Governor got his leave cancelled. The British Government, however, did not give up the practice of appointing members of the I. C. S. as Governors of the

Provinces. The objection of the Congress has been sought to be met by appointing a person serving in one Province or at the centre as the acting or even permanent Governor of the other Province, whenever there may be need. It should be made clear that there is no provision in the Act which stops the appointment of civilians as Governors.

It has been noted above that the executive authority of the Province extends to the subjects enumerated in the Provincial Legislative List and the Concurrent Legislative List subject to certain restrictions as laid down in the Act.*

The Administration of Provincial Affairs. The Act requires the Governor to exercise certain functions in his discretion and certain functions by the exercise of his individual judgment in the same way as the Governor-General is enjoined to act in the federal sphere. No departments of provincial administration are reserved to the discretion of the Governor except the administration of wholly Excluded Areas, though he is vested with many Special Responsibilities, functions in respect of which he is to discharge by the exercise of his individual judgement.† In the sphere which is subject to his discretion or individual judgment, the Governor is under the control of the Governor-General. He must comply with such particular directions as may be given to him from time to time by the Governor-General in his discretion. With this exception, the Governor in the discharge of his functions is to be aided and advised by a Council of Ministers, but all executive action is to run in his name.

Provincial Executive:—The Council of Ministers.—Although the Governor is the head of the Executive in the Province and all executive authority is to be exercised in his name, yet the Act provides for a Council of Ministers, which is supposed to be constitutionally responsible for the administration of the Province according to the spirit of the Act as seen in the Instrument of Instructions to the Governors. Technically, however, it is laid down that there shall be a Council of Ministers to aid and advise the Governor in the exercise of his

Executive authority of the Provincial Governments

Functions subject to the discretion or individual judgment of the Governor

Control of the Governor-General

Executive action to run in the name of the Governor

Function and Powers of the Ministers under the Act

functions, except in so far as he is required to exercise any of them in his discretion. The Governor is also empowered to exercise his individual judgment in any case where he is required to do so.* If any question arises whether any particular matter is a matter where the Governor is required to act in his discretion or to exercise his individual judgment, the decision of the Governor is final. The validity of anything done by him cannot be questioned on the score that he ought or ought not to have acted in his discretion or to have exercised his individual judgment.†

Appointment of the Ministers

The Ministers are chosen and summoned by the Governor. They are sworn as members of the Council and hold office during his pleasure. A Minister must find a seat in the Provincial Legislature or has to vacate office after a period of six months. The salaries of the Ministers are to be determined by an Act of the Legislature, but until that is done, they can be determined by the Governor. The salary of a Minister cannot be varied during his term of office. No court can enquire as to what advice was given by the Ministers to the Governor. It is laid down that the functions of the Governor regarding the choosing, summoning and dismissal of Ministers, and the determination of their salaries are to be exercised by him in his discretion.‡ The Governor in his discretion can preside at the meetings of the Council of Ministers.§

The Governor can preside at the meeting of the Council of Ministers

Judged by the above provisions only, the Ministers seem to be entirely at the mercy of the Governor. The latter chooses, summons and dismisses them, and presides over their meetings at his discretion. But this does not give us the correct view of the position of the Ministers *vis-a-vis* the Governor. The Act is to be interpreted along with the Instrument of Instructions, in which is prescribed the method by which the Council of Ministers is to be selected and also the way in which the affairs are to be administered in the Provinces. It is laid down in Para VIII of the Instrument of Instructions:

The Instrument of Instructions

"In making appointments to his Council of Ministers our Governor shall use his best endeavour to select his Ministers in the following manner, that is to say, in consultation with the person who in his judgment is likely to command a stable majority in the Legislature to appoint those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature.

* Sec. 50 (1). † Sec. 50 (3).

‡ Sec. 51 (1,2,3,4,5). § Sec. 50 (2)

But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers."

This paragraph shows that the Governor is expected under his Instructions to invite the leader of the majority party, who commands the confidence of the House, to help the Governor in selecting other Ministers. The Governor has to see as far as possible that members of important minority communities are included in the Council of Ministers, and he is also to encourage a sense of joint responsibility among the members of the Council of Ministers. Thus though there is no legal obligation on the Governor to have a cabinet in the modern sense of the word, yet according to his Instructions he should do so. Explaining this point the Secretary of State said in Parliament:

"The position of Prime Minister and the collective responsibility are features of the Constitution that are going to grow up. Our intention is to encourage collective responsibility and certainly not discourage the appointment of a Prime Minister. But they are essentially features of a Constitution which grow up rather than are created by Statute. We make our position clear in paragraph VII of the Instrument of Instructions. We make it quite clear that the objective we have in mind is collective responsibility."

According to the Act, the Council of Ministers is to aid and advise the Governor in whole of the administrative sphere in the Province, except where he is required to act in his discretion. It is clear from this that though the Ministers have the right to aid and advise the head of the Executive, nothing has been said in the Act regarding the duty of the latter to follow this advice. The White Paper on Indian Constitutional Reforms explained the functions of the Ministers and their relation with the Governor in the conduct of business as follows:

"The Council of Ministers will be entitled to tender advice to the Governor on all matters which falls within the Provincial sphere other than the use of the powers described in the Constitution Act as exercisable by the Governor at his discretion. The Governor will be guided by the advice tendered to him by his Ministers, unless so to be guided would be in his judgment, in-consistent with the fulfilment of any of the purposes for the fulfilment of which he will be declared by the Constitution Act to be charged with a 'special responsibility'; in which case the Governor will be entitled, and enjoined, to act, notwithstanding the advice tendered to him, in such manner as he deems requisite for the discharge of his special responsibilities."

The Instrument of Instructions explains the real position in this connection, Para IX runs:

Leader of the Majority Party's function

Joint Responsibility

The Secretary of State's Statement

The sphere of ministerial advice

The White Paper on functions of the Ministers and their relations with the Governor

The Instrument of Instructions

"In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by the said Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own."

Summary

This clearly shows that the whole field of Provincial Administration, except where the Governor is required to act in his discretion, is open to the advice of the Ministers, but if the Governor thinks that such an advice comes into conflict with his Special Responsibilities or stands in the way of the proper discharge of any of his functions to be discharged by him by the exercise of his individual judgment, he can ignore this advice and act on his own responsibility. This provision, if strictly interpreted, is likely to whittle down materially the value of Provincial Autonomy, particularly on account of the wide field over which the Special Responsibilities of the Governor extend. Objection was taken in India against this whittling down of the powers vested with the Ministers in the Provinces. The question assumed considerable importance, when the leaders of the majority parties in the Provinces with Congress Party majorities refused to accept office unless an assurance was given by the Governors that they shall not interfere in the day to day administration of the Provinces. This meant that the sphere of advice and the constitutional responsibility of the Ministers was to extend over the whole field including the matters subject to the discretion of the Governors or to their individual judgment. This assurance was refused in the beginning but later on some sort of compromise was arranged by which, though the assurance has not been given in so many words, it is understood that the Governors will not interfere in the day-to-day administration of the Province. It seems that the power of the Governor to disagree with his Ministers in the last resort still

Whittling down of the Provincial Autonomy

Indian objection

The question of assurance of non-interference by the Governors

remains in tact, though in such cases of disagreement the Ministers can either resign or be dismissed by the Governor, or if that is not considered necessary, the Ministers can publicly declare that the Governor is acting on his own responsibility on a particular issue and that their advice is different.

Another condition that is likely to infringe upon the development of the important principle of collective responsibility of the Council of Ministers and thus to reduce the value of Provincial Autonomy is the responsibility of the Governor to see that members of important minority communities are included in the Provincial Ministries. But the actual working of the Provincial Autonomy in the Provinces, has cleared away many misgivings which arose from the mere study of the Act. On account of the understanding between the Ministers and the Governors referred to above, the government of the Provinces is being carried on more smoothly than was expected. So far very few occasions have risen* on which a conflict between the Governor and his Ministers arose and became so important that it came before the outside public. The provision regarding the inclusion of the members of the minority communities in the Provincial cabinets, has also been sensibly handled so as not to impair the collective responsibility of the Councils of Ministers. This question was raised by the Muslim League Parties in the Congress majority Provinces. The Congress Parties in such Provinces refused to have the nominees of the Muslim League Parties in the Ministry unless they would join the Congress Party, thus binding themselves to Congress discipline. This they argued was necessary in order to assure solidarity and joint-responsibility of the Ministers. As the League representatives refused to accept this condition, the Congress Parties included in the Ministries those members of the Muslim community who were prepared to join the Congress. In some Provinces the Governors were approached and their intervention was sought on the ground that this did not adequately fulfil the spirit of the Special Responsibility referred to above. The Governors,

Actual
working

Inclusion
of the mem-
bers of the
minority
communi-
ties in the
Cabinet

Demand of
the Muslim
League

* In the United Provinces and Bihar, the Congress Ministers and the Governors differed on the question of the release of political prisoners. The Ministers threatened to resign, but the constitutional crisis was averted when a compromise between the parties was arranged.

Orissa

however, refused to interfere on the ground that they did not want to make an infringement of the principle of joint responsibility. In Orissa the Congress Ministry was unable to include any Muslim in the Ministry because no suitable member of that community was available to them on their condition. Even here the Governor has refused to interfere. In the Central Provinces and Berar, a Muslim member of the Assembly, Mr. Sharif, was appointed a member of the cabinet. He had to resign his place on account of certain reasons. Since then no Muslim has been taken in the cabinet, though the seat is kept vacant.

Dismissal of
the Ministers

It shall also be noticed that the Governor has the right to dismiss his Ministers who hold office at his pleasure. This right of dismissal can be exercised in a normal case when the Ministers have ceased to possess the confidence of the Legislature. This is a perfectly normal case and in agreement with the principle of responsibility of the Executive to the Legislature. When the Ministry or a Minister against whom a no-confidence motion has been passed by the House refuses to resign, the Governor must dismiss it or him. An interesting case of a slightly different character arose in the Central Provinces and Berar. Dr. Khare, the then Chief Minister of the Province, demanded resignation from his colleagues as he himself wanted to resign with a view to reconstitute his cabinet. Two of his colleagues refused to obey his instructions on the ground that they had received no instructions from the Congress High Command under whose authority the Chief Minister as well as the other Ministers were in actual effect functioning.

Then Dr. Khare having resigned, the Governor dismissed these two Ministers, and allowed Dr. Khare to reconstitute his cabinet. There is a great difference of opinion in the country over this affair. Disciplinary action was taken against Dr. Khare by the Congress High Command so that he was asked to submit the resignation of his cabinet and admit his error of judgment. Moreover it was arranged that he was not elected Leader of the Congress Party in the Legislature, which meant that he could not be selected to be the Chief Minister. The Governor, too, was blamed for trying to cause a rift in the Congress ranks by going out of the way to oblige Dr. Khare.

When the
Ministers
have ceased
to possess
the confi-
dence of the
House

Dr. Khare's
Episode

Judging this question purely from the constitutional point of view and not taking notice of the manner in which the action was taken, it is clear that the Governor was within his constitutional rights to dismiss the two Ministers, who had refused to resign when their Chief had resigned. Rather it was his constitutional duty to do so. The Governor was not called upon constitutionally to take note of the position of the Congress High Command *vis-à-vis* the Provincial Cabinet. He was to deal only with the Leader of the majority party in the Legislature. If Dr. Khare was still the elected Leader, as he was, the Governor had to act as he did.

As far as Dr. Khare's action is concerned, it can not be denied that the Chief Minister, as long as he is the elected Leader and enjoys the confidence of his Party, has the right to demand resignation from his colleagues, if they do not agree with him. Thus Dr. Khare was within his rights to demand resignation from his colleagues. He had also the constitutional right to reconstitute his cabinet, subject to the consent of his Party.

But Dr. Khare acted with indecent haste and forgot that he, his colleagues, and even the whole Party was working under the discipline of the Congress Parliamentary Sub-Committee and ultimately the Congress Working Committee. He ought to have sought the permission of the latter before taking such an important step. Thus Dr. Khare was guilty of indiscipline and his action was morally indefensible, though constitutionally sound. Dr. Khare ought to have consulted the body under whose discipline he had pledged to work, and ought to have put pressure on it by showing that the majority of the members of the Party in the Legislature were with him for the proposal of reconstituting the cabinet. If the Congress High Command had then decided against him and the proposal, then perhaps it would have put itself in the wrong. In this case, too, the only right course for him to take was to resign as a protest.

Another interesting case arose in Bengal. Hon'ble Mr. Nausher Ali had differences with the Chief Minister, Hon'ble Mr. Fazl-ul-Haq, who asked him to resign. He refused to do so, and the Governor also refused to exercise his power of dismissal. Then in order to secure the exit of Mr. Nausher Ali, the

Constitutional Position

The Governor's action

Dr. Khare's constitutional right

Action morally indefensible

Mr. Nausher Ali's case

Chief Minister. Hon'ble Mr. Fazl-ul-Haq, submitted the resignation of the whole cabinet which was accepted. Being the Leader of the majority Party in the Assembly, he was asked to form a new Ministry in which, of course, Mr. Nausher Ali was not included.

Another case for dismissal can arise, when the Ministers still command the confidence of the Legislature but do not enjoy the confidence of the Governor on account of some disagreement between the two. During the controversy in respect of office acceptance, referred to above, the Congress Parties demanded that in the event of a serious disagreement between a Governor and his Ministers, the Governor should dismiss the Ministry from office, so as to make clear his responsibility in this connection. This, however, has not been accepted and the right of the Governor to dismiss his Ministry and the right of the Ministry to resign remain in tact. This point may be made clear by a reference to a situation that arose some time back on the question of the release of political prisoners in the United Provinces and Bihar. There was a serious disagreement between the Ministers and the Governors who, acting under the orders of the Governor-General under S. 126 (2) refused to give their consent to release some political prisoners all at once, which the Congress Ministers wanted to do. The Congress Ministries then resigned making it perfectly clear why they were doing so. The Governors, on the other hand, also made their positions clear. At last the parties reconsidered their positions and a compromise solution was found by which the Governors agreed to release the prisoners in batches and the Congress Ministries withdrew their resignations.

It is hoped that responsible Government in the Provinces will continue to be worked in this spirit so that the maximum good can be done to the people.

Special Responsibilities of the Governor.—The following constitute Special Responsibilities of the Governor :

(a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof ;

(b) the safe-guarding of the legitimate interests of the minorities ;

**When the
Ministers
have lost
confidence
of the
Governor**

**Ministerial
Crisis in the
United
Provinces
and Bihar**

**Peace and
tranquillity
of the Pro-
vince**

**Interests
of the
Minorities**

(c) the securing to and to the dependents of, persons who are members of the Public Services or have been so, of any rights provided or preserved for them under this Act, and also the safe-guarding of their legitimate interests;

Rights of the Services

(d) the securing in the sphere of executive action of the purposes which the provisions of the Chapter of the Act relating to discrimination are designed to secure in relation to legislation;

Prevention of discrimination

(e) the securing of the peace and good government of areas which have been declared to be partially Excluded Areas under the provisions of this Act;

Partially Excluded Areas

(f) the protection of the rights of the Indian States, and the rights and the dignity of the Rulers of these States;

(g) the securing of the execution of orders or directions lawfully issued to him by the Governor-General in his discretion under Part VI of this Act, viz., dealing with administrative relations between the Federation and the Provinces.

Directions of the Governor General

In addition to these, the Governor of the Central Provinces and Berar has another Special Responsibility of securing that the reasonable share of the revenues of the Province is spent in or for the benefit of Berar. The Governor of Sind has the Special Responsibility of securing the proper administration of the Llyod Barrage and Canal Scheme at Sukkur. The Governor, who is discharging functions as Agent for the Governor-General, also has the Special Responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken in respect to any other matter. It is also the Special Responsibility of the Governor to see that the discharge of his functions in respect of Excluded Areas, where they exist, is not prejudiced or impeded by any course of action taken in respect to any other matter. In the discharge of these Special Responsibilities the Governor is empowered to exercise his individual judgment, which means that the Ministers can advise on these matters, though the Governor is not under the obligation of accepting that advice.*

Provisions in respect of Berar

In respect of the Sukkur Barrage

Functions as Agent for the Governor-General

Functions in respect of Excluded Areas

Exercise of Individual judgment by the Governor

* Sec 52. (1, 2, 3).

No Special Responsibility for safe-guarding the financial credit of the Provinces

The doctrine of Special Responsibility and its implications have already been examined in connection with the Special Responsibilities of the Governor-General in the federal sphere.* These remarks may be said to apply generally in the case of the Special Responsibilities of the Governor in the provincial sphere, though allowance must be made for the understanding between the Congress Ministries and the Governors in certain Provinces, referred to above. It shall be noticed that the field of Special Responsibilities in both the cases essentially cover the same ground, though certain differences were bound to be introduced on account of the difference in the circumstances. The most important difference is that no Special Responsibility for safeguarding the financial credit of the Provinces has been vested with the Governors. The J. P. C. rejected the proposal to do so because :

"The addition of a special financial responsibility would increase unduly the range of his special powers. There is no parallel with the situation at the centre, where there is a paramount necessity to avoid action which might prejudice the credit of India as a whole in the money markets of the world, and where so considerable a proportion of the revenues are needed for the expenditure of the reserved departments."†

Additions

Wholly Excluded and Partially Excluded Areas

There are, however, additions to the Special Responsibilities of the Provincial Governors in respect of the partially Excluded Areas and agency functions. Certain backward tracts in the Provinces have been classified as wholly Excluded Areas and partially Excluded Areas. Areas in the former category have been placed under the exclusive control of the Governor and are subject to his discretion. Areas in the latter class are subject to the advice of the Ministers, but are not entirely transferred to their control, being subject to the Governor's individual judgment. The J.P.C. wrote in this connection :

"the responsibility for the government of partially excluded (as opposed to wholly excluded areas) will primarily rest upon Ministers ; but we agree that in view of the responsibility which Parliament has assumed towards the inhabitants of the backward and less civilized tracts in India, it is right to impose a Special Responsibility in this respect upon the Governor."

Agency functions on behalf of the Governor-General

The Governor may also be called upon under the scheme of the Act to perform some agency functions on behalf of the Governor-General, particularly in connection with matters touching the Reserved Departments. Under certain other conditions, which we

*See pages 33-48, † Para 84.

have already examined,* he may issue orders which must be obeyed by the Governor. In this connection, the J. P. C. wrote :

" The Governor-General exercises a wide range of powers in responsibility to the Secretary of State and through him to Parliament. The exercise of some of these powers may from time to time require the co-operation of Provincial Administrations, and a Governor must be in a position to give effect to any directions on orders of the Governor-General designed to secure this object, even if their execution may not be acceptable to his own Ministers."[†]

The agency functions of the Governor on behalf of the Governor-General include the functions regarding Tribal Areas, which are of very great importance on account of their close connection with the defence of the country and the peace of the frontier area. The J.P.C. observed :

" It is apparent that the close connection between the Governor's responsibilities within the administered districts of his Province and the responsibilities of the Governor-General exercised through the person of the Governor in his other capacity as Agent-General for the Tribal Tracts on the borders of the Province makes a provision of this kind necessary."

The Instrument of Instructions to the Governor of the North-West Frontier Province also contains the following instruction :

"Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situated between the frontiers of India and the North-West Frontier Province ; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter."

The position of Berar has already been examined above. The J. P. C. recommended such a Special Responsibility regarding Berar in order not to give any reason for complaint to the people of Berar regarding expenditure from the provincial revenues. It added :

" We think, moreover, that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues, if he is not satisfied that past practice affords an adequate guide for his Ministers and himself for the discharge of the Special Responsibility imposed upon him in respect of them. We also think that the special position of the Berars should be recognized by requiring the Governor, through his

J.P.C.'s observations

Functions regarding Tribal Areas

Special Instructions to the Governor of the North-West Frontier Province

Berar

* See page 125. †, Para. 8.

Instrument of Instructions, to interpret his special responsibility for 'the protection of the rights of any Indian State' as involving *inter alia* an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad."*

The Instrument of Instructions to the Governor of the Central Provinces and Berar, therefore, contains :

"If an agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act, Our Governor shall interpret his Special Responsibility for the safeguarding of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

"Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his Special Responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable."

The Sukkur Barrage

Regarding the Special Responsibility of the Governor of Sind for the Sukkur Barrage, Sir Samuel Hoare explained before the Joint Parliamentary Committee :

"Large sums had been spent. Large debts had been undertaken. Sind is a deficiency province. The Governor-General and the Federal Government must have an exceptional interest in a great work of this kind. It is of more than purely provincial interest."

The J. P. C. observed that this Special Responsibility was necessary—

"In view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest which the Central Government has in it."

Interests of the Minorities

Regarding other Special Responsibilities the Governors have more or less clear instructions in the Instruments of Instructions. Regarding the protection of the legitimate interests of the minorities Para X of the Draft Instrument contains :

"Our Governor shall interpret his Special Responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause, cannot as yet fully rely on their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on

Instrument of Instructions

* Para. 83.

a particular question which has not found favour wth the majority.

" Further, Our Governor shall interpret the said Special Responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and so far as there may be in his Province at the date of issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public."

Regarding the Public Services, it is laid down in Para XI:

" In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the said Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable."

In respect of the prevention of discriminatory treatment, Para XII runs:

"The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any special provision of the said Act."

Regarding the protection of the rights of the Indian States and the dignity of the Rulers, Para XIII contains:

" Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Provincial Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognized, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter with respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects; and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right."

Powers of the Governor with reference to Law and Order.—Law and order is a transferred subject under the Act, but certain safeguards have been provided by vesting the Governor with special powers regarding crimes of violence intended to overthrow the government, the sources of information regarding such crimes, and the making or amending of police rules. It is provided* that in connection with the proposal for making, amending or approving the making of rules, regulations or orders relating

The Public Services

Prevention of discriminatory treatment

Protection of the rights of the Indian States

Safeguards

Police Rules

to any police force, the Governor shall exercise his individual judgment, unless in his opinion the organization or the discipline of the police force is not touched or effected by the proposal.* The Governor may, if he thinks that the peace or tranquillity of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit crimes of violence with the intention of overthrowing the government by law established, direct that certain specified functions shall be discharged by him in his discretion, and this shall continue to be done to the required extent until otherwise directed by him. During the period such a direction is in operation, he may authorize an official to speak, and otherwise participate, except for the purposes of voting, in the proceedings of the Chambers of the Provincial Legislature, their joint sittings, and any committee of the Legislature of which he may be named a member by him. These functions of the Governor are to be performed by him at his discretion. They also do not affect in any way his Special Responsibility for the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.†

Sources of certain information not to be disclosed

The Governor is also called upon to make rules for securing that no records or information in respect of crimes of violence intended to overthrow the government shall be disclosed or given by any member of any police force in the Province to another member of that force except according to the directions of the Inspector-General of Police or Commissioner of Police, as the case may be, or to any other person except according to the directions of the Governor in his discretion, or by any other person in the service of the Crown in the Province to any person except in accordance with the directions of the Governor in his discretion.‡

Serious encroachment on the authority of the Ministers

It is clear that these provisions constitute a serious inroad on the power and responsibility of the Ministers responsible to the Legislature for the administration of the Department of Law and Order, but they are intended to work as safeguards in the interest of peace and order and to keep unimpaired the authority of the Government in the

* Sec. 56. † Sec. 57.

Provinces. The J.P.C. was not prepared to oppose the transfer of law and order to an Indian Minister and observed :

" We shall find ourselves unable to conceive a government to which the quality of responsibility could be attributed, if it had no responsibility for public order. In no other sphere has the word ' responsibility ' so profound and significant a meaning, and nothing will afford Indians the opportunity of demonstrating more conclusively the fitness to govern themselves than their action in this sphere." *

The J.P.C., however, was not unmindful of the risks involved in the transfer of law and order. These risks arise out of the inexperience of the Indian Ministers, and the feelings of distrust, hostility or even revenge towards the members of the police force, who in the discharge of their duties in the past might have been harsh towards the political party in power, in general, or towards the members of that party individually. Regarding the crimes of violence, the risk arises out of the alleged or suspected sympathy of an Indian Minister towards his misguided countryman or countrymen who might be guilty of such violent crimes. Above all it was feared that some sort of political pressure might be brought against the police. With reference to this the J.P.C. wrote :

" The qualities most essential in a police force, discipline, impartiality, and confidence in its officers, are precisely those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above : and it would indeed be disastrous if in any Province the police force, to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid, were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister. If, therefore, the transfer is to be made, as we think it should, it is essential that the Force should be protected so far as possible against these risks, and in the following paragraphs we make recommendations designed to secure this protection." †

These risks are covered by the Special Responsibility of the Governor for the peace and tranquillity of the Province, the power to overrule a Minister, the provision for the exercise of his individual judgment regarding the police rules, the necessity of his prior sanction for legislation amending Police Acts, the rules in respect of prevention of the disclosure of the sources of information regarding crimes of violence, and the Special Responsibility of the Governor to protect the legitimate rights of the Services. The J.P.C. observed in respect of the provisions about the rules as follows :

J.P.C. on
the transfer
of Law and
Order in the
Provinces

Risks in the
transfer of
Law and
Order

J.P.C. on
the protect-
ion of the
Police Force

The Neces-
sary safe-
guards

* Para. 91. † Para. 91.

Views of the
J.P.C.
Police Force

"Our aim is to ensure that the internal organization and discipline of the police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field."*

The provisions regarding the sources of information are necessitated in the view of the J.P.C., because the work of the Special Branch that collects information regarding terrorism necessarily involves—

Sources of
information

"the employment of confidential informants and agents, and it is obvious that these sources of information would at once dry up if their identity became known, or were liable to become known, outside the particular circle of Police officers concerned."†

The J.P.C. justified the special powers regarding terrorism by stating :

Special
Powers in
respect of
Terrorism

"We are, indeed, particularly anxious not to abeolve Indian Ministers in Bengal or elsewhere from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them. But the issues at stake are so important, and the consequences of inaction or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, in our opinion, have a special power, over and above his Special Responsibility for the prevention of any grave menace to peace and tranquillity, to take into his own hands the discharge of this duty, even from the outset of the new Constitution."‡

Major
Attlee's
views on
these safe-
guards

These provisions certainly militate against the spirit of Provincial Autonomy and the responsibility of the Executive to the Legislature. Major Attlee said during the Debates in the Commons :

"We believe that these crimes of violence, this terrorism and conspiracy, can only be dealt with by Indian ministers themselves. It seems to me that the responsibility should be placed on Indian ministers and on the Legislature. If it be found that the Legislature and the Ministers are unwilling to take the responsibility, we think it is better to have a clean cut and to say that the parliamentary system has broken down. If there be any necessity for explaining things, let the Governor do it himself ; let him say that things have broken down ; but do not try to carry on a kind of sham half-and-half parliamentary system."

Actual
working

Happily the ideas that led to the insertion of these provisions have improved to be baseless. Although many previous convicts belonging to the political party which was rightly or wrongly suspected of having hostile feelings towards the police and some sort of sympathy for at least the intentions of the terrorists, have become Ministers in certain Provinces, yet in those Provinces and other Provinces nothing of the kind that was feared by the members of the J.P.C. and others has taken place. The Ministers themselves have shown great keenness to preserve law and order

* Para. 93. † Para. 94. ‡ Para. 96.

in the Provinces and have not hesitated to bring to book certain agitators who, in their opinion, were trying to disturb public peace. Even the Congress Ministers are as keen as others to combat violence and banish the spirit of terrorism from the country once and for all. Moreover they have shown no hostility towards the police force though they are trying to introduce a new spirit of service in it. Thus no occasion, as far as is known, has so far arisen for the use of these safeguards against ministerial action.

Rules for the Conduct of Business.—The Act requires the Governor to make rules for the more convenient transaction of the business of the Provincial Government and for the allocation among the Ministers of the business regarding which he is not required by the Act to act in his discretion. These rules are to require Ministers and Secretaries to the Government to transmit to the Governor all such information about government business which may be specified in the rules or may be required by the Governor. These rules are to require in particular that a Minister shall bring to the notice of the Governor, and the appropriate Secretary shall bring to the notice of the Minister concerned and the Governor, any matter that is likely to involve any Special Responsibility of the Governor. These functions are to be performed by the Governor "in his discretion after consultation with his Ministers."

It is provided that all executive action of the Provincial Government is to be expressed to be taken in the name of the Governor. Orders and instruments made and executed in his name are to be authenticated in the specified manner according to the rules. The validity of such an authenticated order or instrument cannot be questioned on the ground that it is not an order or instrument made or executed by the Governor.*

Advocate-General for the Province.—The Governor of each Province is required to appoint † by the exercise of his individual judgment a person possessing the qualifications of a High Court Judge, to be the Advocate-General for the Province. The latter's duties include tendering advice to the Provincial Government upon legal matters on which his advice may be sought, and performing such other duties of a legal character, as may be assigned or referred to him

Special pro-
vision in re-
spect of
Special
Responsibili-
ties

Executive
action to be
taken in the
name of the
Governor

Qualifica-
tions

Duties

* Sec. 59. † Sec. 55.

Powers

by the Governor. He holds office during the pleasure of the Governor, who also determines his remuneration. He has the right to speak in and otherwise participate in the proceedings of the Provincial Assembly or Council, and also in their joint-sittings, and any Committee of the Legislature of which he may be named a member, but is not entitled to vote.*

The J.P.C. wrote regarding the functions of the Advocate-General :

J. P.C. on
the functions
of the Advo-
cate-General

" In the course of our enquiry we have been impressed by the desirability of making available to each Provincial Government the services of a Law Officer of independence and standing, who would occupy substantially the same position as that of the Advocate-General at present attached to the Government of each of the three Presidencies of Bengal, Madras and Bombay." † " It is no part of our intention to suggest that the office of Advocate-General should, like that of the Law Officers, here have a political side to it ; indeed, our main object is to secure for the Provincial Government legal advice from an officer, not merely well-qualified to tender such advice but entirely free from the trammels of political or party associations, whose salary would not be votable and who would retain his appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he may be associated during his tenure of office." ‡

Appointment

Governor's Secretarial Staff—Like the Governor-General, every Governor is empowered to have his own secretarial staff to be appointed by him in his discretion. The salaries and allowances of the members of the staff, the office accommodation and other facilities can be determined by him in his discretion. The expenses thus incurred are to be charged on the revenues of the Province. \$

J. P. C.'s
views

The J.P.C., while recommending this proposal, wrote:

" It is essential that the Governor should have at his disposal an adequate personnel and secretarial staff of his own. We think also that there should be at the head of the staff a capable and experienced officer of high standing. Such an officer would be a man fully conversant with the current affairs of the Province and in close contact with the administration ; but we do not for a moment contemplate, as some of the Indian delegates seem to think, that he should occupy in any sense a position analogous to that of a Deputy Governor." ||

The Secretary of State said during the Debates that this provision secured the service as Secretary of—

" a man with considerable experience in the Presidency" to a Governor fresh from Great Britain, and also "makes it possible for the Governor to attach to himself a subordinate secretarial staff in order that he may have efficient advice."

The Secre-
tary of
State's
views

* Sec. 64. † Para 400. ‡ Para 401. \$ Sec. 305, || Para 102.

In pursuance of the above, special secretarial staff for the Governor has been appointed in some of the Provinces.

Protection for the Governor.—It should be noted that like the Governor-General and the Secretary of State no process, whatsoever, can be issued from any court in India against the Governor of a Province, whether in a personal capacity or otherwise. And, except with the sanction of His Majesty in Council, no proceedings whatsoever can lie in any court in India against any person, who has been the Governor of a Province, in respect of anything done or omitted to be done by him during his term of office in performance or purported performance of the duties attached to his office. These provisions, however, do not restrict the right of any person to sue the Federation or the Province or the Secretary of State, as the case may be, under the other provisions of the Act.*

Not liable
to be sued

Instrument of Instructions.—The Governor is expected to act according to the instructions issued to him in the Instrument of Instructions for which provision has been made in the Act.† According to this, the Secretary of State must lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend to His Majesty to issue to the Governor of a Province. No further action can be taken about it except in pursuance of an address presented to His Majesty by both Houses of Parliament requesting for the Instrument to be issued. No judicial notice, however, can be taken of the Instrument of Instructions and the validity of any action of the Governor cannot be questioned on the ground that it was not in accordance with the Instrument of Instructions issued to him.

Procedure

The significance of the Instrument of Instructions has already been noticed in connection with the Instrument of Instructions to the Governor-General. Under this Instrument, the Governor is given Instructions as to how he has to perform duties of his office. It includes duties which could not be enjoined on the Governor by the Act itself. These duties in this case include the maintenance of the standard of good administration, encouragement of religious toleration, co-operation and goodwill among

No judicial
notice

Significance

* Sec. 306. † Sec. 53. ‡ See pp. 1

Summary

all classes and creeds, promotion of moral, social, and economic welfare and attempting to fit all classes of the population to take their due share in the public life and government of the Province. The Governor is instructed as to how he is to select his Ministers and exercise his authority in relation to them and regarding his Special Responsibilities. He is further enjoined to safeguard the legitimate interests of the minorities, and the legitimate interests of the Services, to prevent measures which would discriminate, though not discriminatory in form, and to avoid interference with the rights of the States. The Instrument of Instructions to the Governor of the Central Provinces and Berar includes an instruction calling upon him to see that a reasonable share of revenue is expended in or for the benefit of Berar. He can also secure advice of a body of experienced and unbiased persons whom he may appoint for the purpose of recommending changes in the policy regarding Berar. He is also directed to have due regard in the administration of Berar to the commercial and economic interests of the State of Hyderabad. The Governor of the North-West Frontier Province is instructed to have regard to the due discharge of his functions as Agent to the Governor-General in respect of the Tribal Areas. Moreover the Governor has to ensure that, the Finance Minister is consulted upon any proposal by any other Minister which affects the finances of the Province. The Governor is also to keep the Governor-General informed of matters affecting irrigation in the Province in view of the power of the Secretary of State to appoint officers for securing efficiency in irrigation.

Special Provision regarding Berar

Tribal Areas

The Finance Minister

Irrigation

Purpose and Importance

The Instrument of Instructions is generally a prerogative document. Perhaps it remains so in the case of India as well, but it is to be issued with the approval and sanction of Parliament. It is an important document which embodies the spirit in which the provisions of the Government of India Act 1935 should be interpreted and acted upon. In the words of Mr. Joshi, "they are intended to breath life into the dry bones of a legislative enactment, The Instruments, in other words, furnish lubrication for the constitutional machinery."*

* Joshi, G. N. : The New Constitution of India p. 201.

Superintendence of the Governor-General—The Governor is constitutionally responsible to his Ministers only in a sphere which is not subject to his individual judgment or to his discretion. In respect of the matters subject to his individual judgment, he can ignore the advice of his Ministers, while in the case of the matters subject to his discretion, he may not even consult them. He is, however, not irresponsible in the sphere outside the scope of ministerial advice. According to the provisions of the Act, in this sphere the Governor is under the general control of the Governor-General, and has to obey directions that might be given to him by the latter in his discretion. The validity, however, of anything done by the Governor cannot be questioned on the ground that it is not done in accordance with the directions given to him by the Governor-General. The latter is also required to satisfy himself before issuing any directions that they do not require the Governor to act in any manner inconsistent with the Instrument of Instructions issued to him by His Majesty.*

The Act

Directions of the Governor-General to be obeyed

The White Paper proposed :

"In so far as the Governor-General or a Governor is not advised by Ministers, the general requirements of constitutional theory necessitate that he should be responsible to His Majesty's Government and Parliament for any action he may take and that the Constitution should make this position clear. In the case of a Governor, the chain of responsibility must necessarily include the Governor-General."

The White Paper's proposal

The chain of responsibility in the sphere not subject to ministerial responsibility is the Governor who is responsible to the Governor-General, who in his turn is responsible to the Secretary of State, who is responsible to Parliament.

The chain of responsibility

The Powers of the Governor.—It should now be possible to take a general view of the powers of the Governor. It is clear that besides acting as a constitutional head of the Provincial Administration, he is to discharge certain functions *in his discretion* and some others by the exercise of *his individual judgment*. He is authorised to act *in his discretion* in the undermentioned cases. He may choose, summon or dismiss his Ministers, determine their salaries until they are fixed by the Act of the Legislature, and may preside at their meetings. He can also decide any question whether it is subject to his discretion or to his individual judgment.

Summary

Where the Governor may act *in his discretion*

In order to combat crimes of violence intended to overthrow the government, he may direct that some of his specified functions shall be exercised by him in his discretion. In such a case he can also appoint an official to speak in and otherwise take part in the proceedings of the Legislature, except enjoying the right to vote. He can also make rules to prevent information regarding violent crimes being communicated by any member of the Provincial Police Force to any other member of that Force except in accordance with the directions of the Inspector General of Police or the Commissioner of Police, or to any other person except in accordance with his directions, or by any other person in the service of the Crown to any person except in accordance with his directions. The making of the rules for the convenient transaction of the business of the Provincial Government is also subject to his discretion.

**Powers in
respect of the
Legislature**

Regarding the Legislature, he enjoys the following discretionary powers: summoning or proroguing the Legislative Assembly; addressing the Legislative Assembly or the Council and to require the attendance of the members there; sending of messages to the Chamber or Chambers regarding a Bill pending before them; removing certain disqualifications regarding elections to the Legislature; summoning the joint session of the Chambers; to assent or refuse to assent to a Bill or to reserve it for the consideration of the Governor-General; or to return the Bill for the re-consideration of the Legislature; to decide whether any expenditure is charged or not charged on the revenues of the Province; to make rules after consultation with the Speaker or the President, as the case may be, for regulating the procedure and the conduct of business in the Chambers of the Legislature; to secure the completion of the financial business of his Government in the Legislature in time; to prohibit the discussion or the asking of questions on matters connected with Indian States subject to his satisfaction that the matter affects the Provincial Government or a British subject; to secure the prohibition of discussion or asking of questions regarding matters relating to foreign affairs; the discussion of the conduct of the Ruler of any Indian State or the member of the ruling family; to direct that a Bill shall not be proceeded with which would affect the discharge of his Special Responsibility in

regard to the prevention of any grave menace to the peace or tranquillity of the Province : to promulgate Ordinances and to enact Governor's Acts under certain circumstances ; administering the wholly Excluded Areas in the Province ; to assume charge of the Administration in the event of a constitutional breakdown ; carrying out the directions of the Governor General in relation to defence, external affairs, or ecclesiastical affairs, the appointment of the Chairman and other members of the Provincial Public Service Commission ; granting of permission for civil and criminal proceedings to be instituted against a servant of the Crown in respect of any act done in official capacity etc., etc.

Besides, the Governor can exercise his *individual judgment* regarding the following :—

(a) The discharge of Special Responsibilities which include the prevention of any grave menace to the peace or tranquillity of the Province, safe-guarding the legitimate interests of the minorities, protection of the legitimate interests of the members of the Public Services and their dependents, the prevention in the sphere of administration of any discriminatory action against persons domiciled in the United Kingdom, and against British companies, the securing of the peace and good government of partially Excluded Areas, the protection of the rights of Indian States and of the dignity of the Rulers of the States, and the securing of the execution of orders lawfully issued to him by the Governor-General in his discretion, the securing by the Governor of the Central Provinces and Berar of a due share of expenditure for Berar, the securing of proper administration of the Sukkur Barrage by the Governor of Sind, and the performance of agency functions regarding Tribal Areas by the Governor of the North-West Frontier Province.

(b) The appointment, salary and dismissal of the Provincial Advocate-General ; the amending of Police Rules ; certain matters regarding the members of the Services, recruited and controlled by the Secretary of State for India, declaring that the Ruler of any subject of a specified Indian State, or any native of a specified Tribal Area, or territory adjacent to India shall be eligible to hold any civil office in India ; regarding the exercise of the executive authority of the Province in respect of derogation from or any grant or confirmation of title of or to land or any right or privilege in respect of land

Where he
can exercise
his *individ-
ual judg-
ment*

Special Res-
ponsibilities

Miscellane-
ous

or land revenue being a grant or confirmation made before first January, 1870, or made after that date for services rendered, etc. etc.

Importance of the Office of the Governor.—Under the scheme of the Act, the office of the Governor is very important. It seems that the intention of the framers of the Act was to act on the principle of executive independence, so that vast powers have been vested in him. It is clear, as far as the Act goes, that he controls the strings of Provincial Administration in his hands, as he possesses powers in the executive, legislative, and financial spheres. His special powers are intended to make him independent of his Ministers. If these powers were to be exercised according to the letter of the law, the Provincial Autonomy and the Responsible Government in the Provinces will be no better than a farce. Happily, however, the short experience of the working of the scheme of Provincial Autonomy has dispelled this fear, because the Governors are acting more or less on a sort of understanding with the Ministers position which allows scope to the latter to take action on their own responsibility in almost whole of the administrative sphere.

Comparison and Contrast between the Positions of the Governor and the Governor-General.—The position of the Governor in the provincial sphere and that of the Governor-General in the federal sphere are analogous in certain respects but differ in others. Both of them possess certain special powers intended to achieve similar purposes, such as the maintenance of the peace and tranquillity in their respective spheres and the prevention of discrimination, etc. ; but there is no Reserved Department in the Provinces as is the case at the centre, except the functions regarding Excluded Areas. Moreover the Governor of a Province has no Special Responsibility for the financial stability of the Province. As a result of this the Governor has to be guided by ministerial advice in a far larger sphere than the Governor-General in the federal sphere. As a result of the understanding already referred to, the Governor has become in actual effect a purely constitutional Governor. Thus the above comparison between the position of the Governor and the Governor-General is true only if the provisions of the Act are strictly interpreted.

Provincial
Autonomy—

APPENDIX V

DRAFT INSTRUMENT OF INSTRUCTIONS TO THE GOVERNORS

WHEREAS by Letters Patent bearing even date We have made effectual and permanent provision for the office of Governor of

AND WHEREAS by those Letters Patent and by the Act of Parliament passed on (2nd August 1935) and entitled the Government of India Act, 1935 (hereinafter called "the said Act"), certain powers, functions and authority for the Government of the Province of are declared to be vested in the Governor as our Representative :

AND WHEREAS without prejudice to the provision in the said Act that in certain regards therein specified the Governor shall act according to instructions received from time to time from Our Governor-General, and to the duty of Our Governor to give effect to instructions so received, We are minded to make general provision regarding the due manner in which Our said Governor shall execute all things which, according to the said Act and the said Letters Patent, belong to his Office, and to the trust which we have reposed in him :

AND WHEREAS by the said Act is provided that the draft of any such instructions to be issued to a Governor shall be laid by our Secretary of State before both Houses of Parliament :

AND WHEREAS both Houses of Parliament, having considered the draft laid before them accordingly, have presented to us an Address praying that Instructions may be issued to Our Governor of in the form which hereinafter follows :

NOW THEREFORE We do by these Our Instructions under Our Sign Manual and Signet declare Our pleasure to be as follows :

A—Introductory

I. Under these Our Instructions, unless the context otherwise require, the term "Governor" shall include every person for the time being administering the Office of Governor according to the provisions of our Letters Patent constituting the said Office.

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court shall, and he is hereby required to, tender and administer unto him.

IV. And we do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. AND WE do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. AND WHEREAS great prejudice may happen to our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from us under Our Sign Manual or through one of Our Principal Secretaries of State.

B—In Regard to the Executive Authority of the Province

VII. Our Governor shall do all that in him lies to maintain standards of good administration ; to encourage religious toleration, co-operation and goodwill among all classes and creeds ; and to promote all measures making for moral, social and economic welfare, and tending to fit all classes of the population to take their due share in the public life and Government of the Province.

VIII. In making appointments to his Council of Ministers, Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, in consultation with the person who, in his judgment, is likely to command a stable majority in the Legislature, to appoint those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. But, in so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

IX. In all matters within the scope of the executive authority of the Provinces, save in relation to functions which he is required by the said Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the said Act committed to him, or with the proper discharge of any of the functions which he is otherwise by the said Act required to exercise on his individual judgment ; in any of which cases Our Governor shall, notwithstanding his Ministers' advice, act in exercise of the powers by the said Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

X. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of the people committed to his charge who, whether on account of the smallness of their number or their lack of educational or material advantages or from any other cause cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Service to the communities, and, so far as there may be in the Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of the policy is essential in the interests of the communities affected or of the welfare of the public.

XI. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the said Act and the safeguarding of their legitimate interests, Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XII. The special responsibility of Our Governor for securing in the spheres of executive action any of the purposes which the provisions of Chapter III of Part V of the said Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the said Act.

XIII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers, and no Bill of the Provincial Legislature shall become law, which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognized, whether derived from treaty, grant, usage, sufferance or otherwise, not being a right appertaining to a matter with respect to which, in virtue of the Ruler's Instrument of Accession, the Federal Legislature may make laws for his State and his subjects: and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIV. If an agreement is made with His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the said Act Our Governor shall interpret his special responsibility for the safeguarding of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if our Governor is at any time of opinion that policy hitherto in force affords to him no satisfactory guidance in the interpretation of his Special Responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar, he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

XV. In the framing of rules for the regulation of the business of Provincial Government, Our Governor shall ensure that amongst other provisions for the effective discharge of the business, due provision is made that the Minister in charge of the Finance Department shall be consulted upon any proposal by any other Minister which affects the finances of the Province: and further that no reappropriation within a Grant shall be made by any Department otherwise than after consultation with the Finance Minister; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers,

XVI. Having regard to the powers conferred by the said Act upon Our Secretary of State to appoint persons to Our service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XVII. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province ; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

C. Matters Affecting the Legislature

XVIII. Our Governor shall not assent in Our name to but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say :—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India ;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the said Act designed to fill ;
- (c) any Bill which would alter the character of the Permanent Settlement ;
- (d) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V of the said Act.

XIX. If an agreement is made with His Exalted Highness the Nizam of Hyderabad as aforesaid, Our Governor in notifying his assent in Our name to any enactment of the Provincial Legislature shall declare that his assent has been given in virtue of the provisions of Part III of the said Act and in pursuance of the agreement between Us and His Exalted Highness the Nizam.

XX. It is Our will that the power vested by the said Act in Our Governor to stay proceedings upon a Bill in the Provincial Legislature in the discharge of his Special Responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill would itself endanger peace and tranquillity.

XXI. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

CHAPTER VIII

THE PROVINCIAL LEGISLATURE

Constitution of the Provincial Legislatures ; Composition of the Legislatures ; The Legislative Councils ; The Legislative Assemblies ; The Franchise Qualifications ; General Qualifications regarding Franchise ; General Disqualifications ; Franchise Qualifications for the Punjab Legislative Assembly ; Some General Provisions regarding Provincial Legislatures ; Officers of the Chambers ; Rights of the Ministers and the Advocate-General as respects the Chambers ; Meetings of the Legislature ; Voting in the Chambers ; Provisions as to the Members of the Legislatures ; Privileges of the Members ; Powers and Functions of the Provincial Legislatures ; Restrictions on the Powers of the Provincial Legislatures ; General Procedure —Legislative ; Procedure in Financial Matters ; Rules for the Conduct of Business ; Legislative Powers of the Governors ; Provisions in case of a Failure of the Constitutional Machinery ; Actual Working.

Constitution of the Provincial Legislatures.—The Provincial Legislatures consist of His Majesty represented by the Provincial Governors and one or two Chambers in different Provinces. There are two Chambers in the Provinces of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam. The other Provinces, the Punjab, the Central Provinces and Berar, North-West Frontier Province, Orissa, and Sind have one Chamber each. Where there are two Chambers of the Provincial Legislature, the upper house is known as the *Legislative Council*, and the lower house as the *Legislative Assembly*. In the case of the Provinces where there is only one Chamber, it is known as the *Legislative Assembly*.*

Legislative
Councils and
Legislative
Assemblies

Under the Government of India Act, 1935, a bicameral system of legislature has been introduced for the first time in the Provinces. This has been done as a result of the recommendation of the Joint Parliamentary Committee. The White Paper proposed second Chambers for Bengal, United Provinces, and Bihar only. The J.P.C. recommended second Chambers for Bombay and Madras, while the Parliament proposed one for Assam. The question of introducing the system of bicameral legislature was examined by the Montford Committee, but was not recommended as it was thought to be inexpedient and

Bicameral
system of
Legislature
in the Pro-
vinces

* Sec. 60.

unnecessary. The Simon Commission was not unanimous on the point. The Lothian Committee considered the matter and came to the same general conclusion as the Statutory Commission. Explaining the reason why two Chambers were established in certain Provinces while in others this was not done, Mr. Butler said in Parliamentary Debates :

Mr. Butler's explanation

" In all the five cases we have a substantial recommendation from the Provinces that there should be a second Chamber. The Joint Select Committee, when they reviewed this matter in detail, decided that it was in the interests of these Provinces or Presidencies that there should be second Chambers. When I come to the case of the Punjab, for example, it may help to explain why there is a difference between the Provinces. The suggestion for a second Chamber in the Punjab was rejected without a division by the local legislature in 1922. Throughout the discussions upon second Chambers, there has been very marked opposition to the establishment of a second Chamber in the Punjab and we have not desired to press it absolutely against the expressed wish of the Province. With regard to the other Provinces—Assam, the Central Provinces and Sind—the main argument against the establishment of a second Chamber has been the difficulty of finding personnel to man two Chambers of the legislature satisfactorily, the difficulty of expense and the feeling that in these Provinces, which are rather smaller than the other Provinces, it may not be necessary to the same extent to have two Chambers of the legislature. Those are the reasons why partly through the history of the case, partly through the needs of the particular Provinces and partly from the size of certain Provinces and the personnel, we have decided to insert in the Bill the Provinces of Madras, Bombay, Bengal, the United Provinces and Bihar."*

The case of the Punjab

Thus the only arguments that have been given in favour of this system are that there is material for manning the two Chambers, and that there are existing special conditions in these Provinces which necessitate the establishment of bicameral legislature in them.

Indian opinion on the point

These arguments are clearly not very convincing, and progressive Indian opinion has throughout been against the introduction of the system. It regards it as a retrograde step and calculated to work as a break on progressive social, economic and political legislation in the Provinces. It is considered to be an impediment in the working of democracy in the Provinces. Although Lord Halifax denied in the Parliamentary Debates that this step was being taken to entrench privilege or afford merely one more tiresome check upon the opportunities in India to adopt a progressive policy, yet in this country nothing better is thought of it. It has been freely suggested that second Chambers

Lord Halifax's defence

* Par. Deb. Vol. 299, Cols. 1054-5.

have been established for safe-guarding the large zamindari and other vested interests in certain Provinces. Some even suspect, rightly or wrongly, that the second Chambers have been established in the Provinces, where it was expected that there would be Congress majorities in the Assemblies. Sir Tej Bahadur Sapru in his Memorandum tried to bring home to the members of the J P.C. the arguments against the establishment of the second Chambers in the Provinces. Even in Parliament some members opposed this move. Lord Strabolgi, for instance, submitted that India needed bold policies rather than cautious policies resulting from the checks and safeguards. He said :

"The out-of-date system of land tenure, the poverty, the terrible poverty of the masses on the land and the industrialized cities, some of the caste customs, which literally check ordinary material progress—these things need abolishing, and abolishing quickly, and radically, and bodily, and the last things which I submit, you want in India are constitutional checks and additional means of preventing the rapid re-organization and re-planning of the whole economic system in India."*

There is no denying the fact that the Legislative Councils in the Provinces are a concession, as Doctor Keith puts it, to conservative feeling in India and the United Kingdom.

So far no serious conflict between the Councils and the Assemblies in the Provinces has occurred, though the former differ in the elements composing them from those composing the latter. The Assemblies, generally speaking, are more progressive than the Councils and, therefore, there is a marked difference of out-look between the two bodies. In the Provinces where there are Congress Ministries, the Assemblies, generally speaking, are dominated by the Congress majorities, while the Councils are dominated by non-Congress elements. Thus there is always a great likelihood of a serious conflict of opinion between the two Houses. So far this, perhaps, has not occurred because in most cases, the Congress can claim a clear majority in the joint sittings of both the Houses. But a conflict has recently arose, even in spite of this, between the two Houses in the United Provinces over the Court Fees Amendment Act.

Safeguarding vested interests

Sir T. B. Sapru's Memorandum

Lord Strabolgi's criticism

Dr. Keith's view

The actual working of the bicameral system

* Debates, House of Lords.

practically double the number reserved for them under the Communal Award :

3. The Muhammadan ;
4. The European ;
5. The Anglo-Indian ;
6. The Indian Christian ;
7. The Sikh (in the Punjab and in the North-West Frontier Province) ;
8. Commerce, Industry, Mining and Planting interests—British and Indian.
9. The Land-holders ;
10. The Labour ;
11. The Universities ;
12. Backward Areas and Tribes ;
13. The Women—General ;
14. The Women—Sikh ;
15. The Women—Muhammadan ;
16. The Women—Anglo-Indian ;
17. The Women— Indian Christian.

The details of the seats allotted to the various communities and interests are to be found in the table of seats appended to the Fifth Schedule to the Act. In the Punjab, the Legislative Assembly consists of 175 members, composed of 42 General Seats including 8 Seats reserved for the Scheduled Castes, 31 Sikh Seats ; 84 Muhammadan Seats, 1 Anglo-Indian Seat ; 1 European Seat ; 2 Indian Christian Seats ; 1 Seat reserved for the representative of Commerce and Industry ; 5 Landholders' Seats, 1 University Seat ; 3 Labour Seats ; 1 General Seat for Women ; 1 Sikh Seat for Women ; and 2 Muhammadan Seats for Women.

Composition
of the
Punjab
Legislative
Assembly

The Delimitation
of Constituencies
Committee

Powers are granted under the Act to His Majesty in Council to make provisions from time to time regarding franchise and election. With that view a Delimitation of Constituencies Committee, with Sir Laury Hamond as Chairman and Sir M. Venkatasubba Rao and Mr. Justice Din Muhammad as members, was appointed for the purpose of delimiting constituencies for Provincial Assemblies. As a result of the

recommendations of this Committee, the Provinces are divided in Territorial Constituencies. The latter are sub-divided into "Rural" and "Urban," except for the Special Seats. The system of separate communal electorates is retained. All members of the Assemblies are to be elected, there being no provision for any nomination for any seat. Unlike a Legislative Council, the life of a Provincial Legislative Assembly is limited to five years unless it is sooner dissolved.

The Franchise Qualifications.—The members of the Provincial Legislatures are to be elected as a result of a fairly broad franchise. Before the enforcement of this Act, the Provincial electorate numbered 7,000,000 men and women or about three percent of the population of British India. The Simon Commission recommended that the franchise should be extended so as to enfranchise about ten percent of the total population. The First Round Table Conference suggested that it should be extended to include 25 percent of the total population. The Lothian Franchise Committee made recommendations regarding franchise which resulted in enfranchising of about 14 percent of the total population of British India. It was estimated that the proposals put forward in the White Paper which have been adopted with certain modifications of minor importance were calculated to create a male electorate between 28 and 29 million and a female electorate of over six million, as compared with seven million male and three hundred and fifteen thousand female electorate which existed before these proposals. The basis of the franchise is essentially a property qualification, including the payment of land revenue, or the payment of rent in towns, or tenancy, or payment of income tax. Besides these there are certain educational qualifications and some special qualifications designed to secure an adequate representation of women and to give the right to vote to about 10 percent of the Depressed Classes or the Scheduled Castes. Special electorates have been provided for labour, commerce and landlord seats. Retired, pensioned, and discharged military officers, non-commissioned officers and men belonging to His Majesty's Regular Forces have also been given the right to vote. According to the J. P. C.:

"The individual qualifications vary according to the circumstances of the different Provinces, but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike."† The Committee further

* Sec. 61 (2). † Para 25.

Rural and
Urban Cons-
tituencies

Separate
Communal
Electorates

No Nomina-
tion

Tenure

Extension of
Franchise

Lothian
Franchise
Committee's
Recommen-
dations

Effects of
the Recom-
mendations

Property
Qualifica-
tions

Educational
and Special
Qualifica-
tions

Special
Electorates

J.P.C.'s
Views

noted that "the proposals, taken as a whole are calculated to produce an electorate representative of the general mass of the population and one which will not deprive any important section of the community of the means of giving expression of its opinions and desires" The proposals will in the case of most Provinces redress the balance between town and country, which is at the present time too heavily weighted in favour of urban areas; they will secure a representation for women, for the Depressed Classes, for industrial labour, and for special interests; and they will enfranchise the great bulk of the small land-holders, of the small cultivators, of the urban rate-payers, as well as a substantial section of the poor classes."¹

General Qualifications regarding Franchise.—A person is not qualified to be chosen a member of a Provincial Legislature unless he is a British subject or the Ruler or a subject of an Indian State, which has acceded to the Federation, or a subject of any prescribed Indian State; or is in the case of a seat in a Legislative Assembly, not less than 25 years of age, and in the case of a seat in the Legislative Council not less than 30 years of age. No person is entitled to be included in the electoral roll or to vote in any election in any territorial constituency, if he is of unsound mind and has been so declared by a competent court.

Age Qualifications

Communal Electorates

General Constituencies

Franchise Qualifications for Women

No person can be included in the electoral roll for a Sikh constituency, a Muhammadan constituency, and an Anglo-Indian constituency, a European constituency, or an Indian Christian constituency unless he is a Sikh, a Muhammadan, an Anglo-Indian, a European or an Indian Christian respectively. No person who is entitled to be included in the electoral roll for any of the abovementioned constituencies in any Province can be included in the electoral roll for a General constituency in that Province, or vote for any election for a General Seat. This does not apply to General Seats reserved for women in Assam and Orissa. It is generally provided regarding the enfranchisement of women in respect of the qualifications of their husbands, that a woman who, at the death of her husband, is included in an electoral roll for a territorial constituency by virtue of his qualifications shall continue to be on the roll for that constituency unless she remarries or becomes disqualified under the provisions of the Sixth Schedule to the Act. But not more than one woman shall at any one time appear in the electoral rolls for the territorial constituencies in a Province in respect of the qualifications

¹ Para. 127.

of any particular man. If any woman so entitled changes her place of residence, she may be transferred to the roll of such other constituency which may be appropriate. Special provision is made for election of the representatives of the Scheduled Castes as a result of the Poona Pact. A number of seats has been reserved for them from among the General Seats. These are to be filled up by an unusual form of double election.

Provision for the Scheduled Castes

"All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies will elect a panel of four candidates belonging to their own body, and the four persons who received the highest number of votes in the primary election will be the only candidates for election to the reserved seat; but the candidate finally elected to the reserved seat will be elected by the General electorate, that is to say, by caste Hindus and by members of the Depressed Classes alike."

Method of Election

In order to avoid doubt regarding this election, it is declared in the Government of India (Provincial Legislative Assemblies) Orders, 1936, that the primary election held for the purpose of electing candidates for a seat reserved for the members of the Scheduled Castes may be proceeded with even if there are less than four candidates at the primary election and that the remainder of the election may be proceeded with if on account of any reason there are less than four duly elected Scheduled Caste candidates for the seat.

General Disqualifications.—A person is considered to be disqualified for being chosen as a member of any Chamber of a Provincial Legislature*—

(a) if he holds any office of profit under the Crown in India, other than an office declared by an Act of the Provincial Legislature not to disqualify its holder. (It is provided in the Act that a person shall not be deemed to hold an office of profit under the Crown in India by reason of his being a Federal or a Provincial Minister);

Office of Profit

(b) if he is of unsound mind and has been so declared by a competent court;

Unsound mind

(c) if he is an un-discharged insolvent;

Undischarged Insolvent

(d) if he has been convicted or has been found guilty of any offence or corrupt or illegal practice

Guilty of offence relating to elections

Two years imprisonment

Failure to lodge a return of election offences

Serving a sentence for a criminal offence

Unqualified person sitting or voting in the Chamber

Not less than 21 years

Owning a dwelling house

relating to elections, which has been declared to be an offence or practice entailing disqualification for membership of the Legislature by an Order in Council or by a Provincial Act, unless such period has elapsed as has been specified in that Order or Act;

(e) if he has been convicted for any other offence, by a court in British India or in a Federated State and sentenced to transportation or imprisonment for not less than two years, unless a period of five years or such less period as the Governor may allow in any particular case in his discretion, has passed since his release;

(f) if having been nominated as a candidate for the Federal or any Provincial Legislature or having acted as an election agent of any candidate, he has failed to lodge a return of election expenses in the prescribed manner and within the fixed time, unless five years have elapsed from the date for filing these returns or the Governor at his discretion has removed the disqualification. The disqualification under this provision does not take effect until the expiration of one month from the date for filing the returns or such longer period as may be allowed by the Governor in his discretion in any particular case; or

(g) if he is serving a sentence of transportation or of imprisonment for a criminal offence.

It is also provided that if a person not qualified for membership sits or votes as a member in a Chamber of the Provincial Legislature, he shall be liable to a penalty of five hundred rupees in respect of each day on which he sits or votes in the House. This penalty will be recovered as a debt due to the Province.*

Franchise Qualifications for the Punjab Legislative Assembly.—In the case of the Punjab Legislative Assembly, a person not less than 21 years of age holding the following qualifications among others is entitled to vote:—

A. Residence. In the case of territorial constituencies no person is qualified to be included in an electoral roll unless he is resident in the constituency. For this purpose it is sufficient that a

* Sec. 69 (4).

person owns a family dwelling house or a share in a family dwelling house in a constituency and that that house has not been let on rent during the preceding twelve months.

B. Taxation Qualifications. A person is qualified to be included in the electoral roll for a territorial constituency, if for the previous financial year (a) he pays income tax; or (b) pays not less than fifty rupees as direct municipal or cantonment tax; (c) or pays hasiyat or profession tax amounting to not less than two rupees, or some other direct tax under the Punjab District Boards' Act of the same amount.

C. Property Qualifications. A person is also qualified as a voter for any territorial constituency, if (a) he is the owner of land in the Province assessed to land revenue of not less than five rupees per annum; or (b) is a tenant with a right of occupancy in respect of land assessed to land revenue of not less than five rupees per annum; or (c) is an assignee of land revenue in the Province amounting to not less than ten rupees per annum; or (d) is a tenant of not less than six acres of irrigated land in the constituency or of not less than twelve acres of un-irrigated land in the constituency; (A person, who is the tenant of both irrigated and un-irrigated land in the constituency is considered to have satisfied this condition if the sum of the area of the irrigated land and half the area of that unirrigated land is not less than six acres); or (e) throughout the previous year has owned immovable property in the Province of the value of not less than two thousand rupees or of an annual rental value of not less than sixty rupees not being land assessed to land revenue; or (f) throughout the previous year has been a tenant of immovable property, not being land assessed to land revenue, of an annual rental value of not less than sixty rupees; or (g) is a Zaildar, Inamdar, Sufedposh or Lambardar in the constituency.

D. Educational Qualifications.—A person is also qualified to be included in the electoral roll for any territorial constituency, if he is proved in the prescribed manner to have attained the primary or an equivalent or higher educational standard. It is provided in the rules that the application of a person who claims enrolment on the basis of literacy or of an

Payment of
Income tax ;
Municipal or
Cantonment
tax ; Hasiyat
or Profession
tax ; or some
other direct
tax

Owner of
land.

Occupancy
Tenant

Assignee of
land revenue.

Tenant of
irrigated
and unirri-
gated land

Owner of
immovable
property

Tenant of
immovable
property

Zaildar,
Inamdar etc.

Primary
standard

educational qualification must be wholly in the handwriting of the applicant, and must include a statement to that effect in the application. It must either be written in the presence of a person authorised to receive such applications, or must be attested to have been written by the applicant by any Magistrate or Sub-Judge or Head Master or Head Mistress of any recognized school, or by any Gazetted Government Officer or any Inspector of the Co-operative Department or by any Sub-Registrar. A person, who claims enrolment as a voter on the ground of having passed the primary or any higher standard of education, is required to produce with his application a certificate issued by the appropriate Education Department or a copy of the same duly attested. The passing of the primary standard can be proved by the production of a copy, attested by the Issuing Authority, of the admission and withdrawal register of a Primary School. If, however, an applicant writes his application in English, he is considered to have passed the Primary standard.

Retired Military Officers

E. Service of His Majesty's Forces. A person is entitled to be included in the electoral roll for any territorial constituency, if he is a retired, pensioned, or discharged officer, non-commissioned officer or soldier in His Majesty's Regular Military Forces.

Pensioned widows or mothers

F. Additional Qualifications for Women. A woman is entitled to be included in the electoral roll for a territorial constituency, if she is the pensioned widow or the pensioned mother of a person who was an officer, non-commissioned officer or soldier of His Majesty's Regular Military Forces, or (b) if she is a literate person, or (c) if her husband possesses the following qualifications :—

Special Qualifications possessed by the husband

(1) if he pays income-tax for the previous financial year or pays any direct municipal or cantonment tax amounting to not less than fifty rupees; or

(2) if he is a retired, pensioned or discharged officer, non-commissioned officer, or soldier of His Majesty's Regular Military Forces; or

(3) if he owns or has in the past year owned immovable property in the Province, of the value of not less than four thousand rupees or of an annual rental value of not less than ninety-six rupees, not being land assessed to land revenue; or

(4) if in the preceding year he has occupied as a tenant immovable property, not being land assessed to land revenue, of an annual rental value of not less than ninety-six rupees; or

(5) if he is the owner of a land in the Province assessed to land revenue of not less than twenty-five rupees per annum; or

(6) if he is the assignee of land revenue in the Province amounting to not less than fifty rupees per annum; or

(7) if he is a tenant or lessee under the terms of a lease for a period of not less than three years of Crown land in the constituency of the annual rental value of at least twenty-five rupees; or

(8) if he is a tenant with a right of occupancy regarding land assessed to land revenue of at least twenty-five rupees per annum.

It should also be noted that under the rules, in cases where literacy is the required qualification as referred to above, the writing of the application by an applicant is accepted as a sufficient proof for the purpose. It is also laid down in the rules that an application submitted by a wife on the ground of any qualification of her husband should state the particular qualification of the husband on which the claim is based.

Literary Qualifications

Qualifications to be specified

G. Special Qualifications for the Scheduled Castes.—
A member of a Scheduled Caste is entitled to be included in the electoral roll of a territorial constituency if he is literate, or in the previous year has owned immovable property in the Province, not being land assessed to land revenue, of the value of at least fifty rupees, or has in the preceding year owned *malba* of a house in the Province of the value of not less than fifty rupees, or has during the previous year occupied as tenant immovable property in the constituency of an annual rental value of not less than thirty-six rupees.

Literacy

Ownership of immovable property

In the case of *special constituencies* in the Punjab, the general qualifications and disqualifications mentioned above also apply. It is provided in the Government of India (Provincial Legislative Assemblies) Order, 1936, that where at an election a poll is taken for filling up more than one seat, a voter shall have as many votes as there are seats and may cast

Special Constituencies

No voting in
two Constituencies

these votes in favour of one candidate, or may distribute these votes among the candidates as he thinks fit. But no person is entitled to be included twice in the electoral roll for any particular constituency, and the fact that a person has been so included in the electoral roll does not increase his rights as respects voting.*

Women Seats

It is laid down† regarding Women Seats that no man is entitled to vote at any election in any Muhammadan constituency reserved for women. A woman is not qualified to stand from a women constituency unless she is entitled to vote in the choice of a member to fill that seat, or some other seat belonging to the same community. In the case of a European Seat, a person is not qualified to stand unless he is a European entitled to vote in the choice of a member to fill that seat or some other seat. The same rule applies to an Indian Christian Seat, where the candidate is required to be an Indian Christian. In the case of Commerce and Industry Seat, a person is qualified to be included in the electoral roll, if he is himself a qualified member or is the nominee for the purpose of a firm, Hindu Joint Family or corporation which is a qualified member of one of the constituent bodies. These constituent bodies under the rules are the Northern India Chamber of Commerce, the Punjab Chamber of Commerce, the Indian Chamber of Commerce, and the Punjab Trades Association. In respect of Land-holders' Seats, it is provided that they are to be filled up by representatives of land-holders in the specified constituencies. Regarding the Tumandars' Seat, it is laid down that a person is not qualified to be included in the electoral roll unless he is resident in the Province and is a Tumandar recognized by the Government, or a person who is performing the duties of a Tumandar under the sanction of the Government. The Labour seats are divided between a Trade Union Labour Seat and two non-Union Labour Seats. The electoral roll for the Trade Union constituency is based on membership of the North Western Railway Union, while that of the non-Union Labour constituency is based on employment at qualifying industrial establishments such as factories and mines. For the Labour constituency, six months' residence

European Seats

Indian Christian Seats

Commerce and Industry Seats

Landholders' Seats

Labour Seats

*The Government of India (Provincial Legislative Assemblies) Order, 1936, 18 (2) † Ibid. Part VI, 21.

in the Province is also necessary. A person employed wholly or mainly in a clerical, supervisory, recruiting or administrative capacity is not qualified to be included in the electoral roll for a Labour constituency. One, who is subject to Indian Military Law, is not qualified to be included in the electoral roll for any Labour constituency.

As far as the University Seat is concerned, a person is qualified to be included in the electoral roll for the University constituency, if he has a place of residence in India, and is a member of the Senate of the Punjab University, or has been for at least seven years a graduate of the Punjab University and was registered as such in the University Register throughout the two years immediately preceding the prescribed date. A candidate for the seat must possess the necessary qualifications for enjoying the right to vote for the seat, otherwise he is not qualified to be chosen to fill the seat.*

Some General Provisions regarding Provincial Legislatures : Officers of the Chambers.—Every Provincial Legislative Assembly is required to choose two of its members to be its *Speaker* and *Deputy Speaker*, respectively. So often as these offices fall vacant, the Assembly is to choose another member or members to fill up the office or offices, as the case may be. The Speaker or the Deputy Speaker of the Assembly holds office only as long as he is a member of the Assembly. He may resign his office any time by writing to the Governor. He may also be removed from office by a resolution of the Assembly passed by a majority of the members after a notice of at least fourteen days.

When the office of the Speaker is vacant, the Deputy Speaker performs the duties of that office. When the office of the latter is also vacant, such a member of the Assembly as the Governor may, in his discretion, appoint, performs those duties. During the absence of the Speaker from any sitting of the Assembly, the Deputy Speaker acts as the Speaker. But if he is also absent, such a person as may be determined by the rules of procedure of the Assembly, acts as the Speaker, and in the absence of even such a person, a person determined by the Assembly, acts as the Speaker. When the Assembly is dissolved, the Speaker is not called upon to vacate his office until immediately before the first meeting of the Assembly after the dissolution.

University
Seat

The
Speaker and
the Deputy
Speaker
of the
Assembly

No voting in
two Constitu-
encies

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European
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Indian
Christian
Seats

Commerce
and Industry
Seats

Landholders'
Seats

Labour Seats

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The President and the Deputy President of the Council

Advocate-General can not vote

Discretion of the Governor

Governor's Powers

These provisions, except one in respect of the vacating of the office on the dissolution of the Assembly, also apply to the Provincial Legislative Councils, where they exist, but the "Speaker" and the "Deputy Speaker," in this case, are to be called the *President* and the *Deputy President*. The Speaker or the President, or a person acting as such, cannot vote in the first instance, but possesses a casting vote and can exercise it in the case of an equality of votes.*

Rights of the Ministers and the Advocate-General in respect of the Chambers.—Every Provincial Minister and the Provincial Advocate-General have the right to speak in and otherwise participate in the proceedings of the Provincial Legislature, in any joint-sitting of the Chambers of the Legislature, and any Committee of the Legislature of which they may be named members. This provision does not confer the right to vote on the Advocate-General and the Ministers, but the latter enjoy that right by virtue of their being elected members of the Legislature while the Advocate-General cannot claim that right.†

Meetings of the Legislatures.—The Chamber or Chambers of the Provincial Legislature, as the case may be, must be summoned to meet at least once every year. Not more than twelve months are to intervene between the last sitting in one session and the first sitting in the next session of the Chamber or the Chambers. Subject to this, the Governor, in his discretion, may from time to time summon the Chamber or Chambers at any time and place, prorogue them, or dissolve the Legislative Assembly. Regarding the first session of the Chamber or Chambers of the Provincial Legislature, it is laid down in the Act that it should not be held later than six months after the introduction of Provincial Autonomy.‡

The Governor is empowered to address, in his discretion, any Chamber of the Provincial Legislature or both Chambers assembled together. He may require the attendance of the members for the purpose. He can also, in his discretion, send messages to the Chamber or Chambers with respect to a pending or any other Bill. A Chamber, to whom any such message is sent, is required to consider forthwith any matter which is required by the message to be taken into consideration.§

Voting in the Chambers.—Except as otherwise provided in the Act, all questions in a Chamber, or

* Sec. 65. † Sec. 64. ‡ Sec. 62. § Sec. 63.

joint sittings of the Chambers, of a Provincial Legislature, are determined by a majority of votes of the members present and voting other than the speaker or the President, or the person acting in their place. The Provincial Legislature is empowered to act even if there is any vacancy in its membership. The proceedings of the Legislature are deemed valid notwithstanding that it is discovered later on that some person, who was not entitled to sit or vote, sat or voted, or otherwise took part in the proceedings. The quorum of members is fixed at one-sixth of the total members in the case of the Assembly and at least ten members in the case of the Council.*

Majority vote

Quorum

Provisions in respect of the Members of the Legislatures.— Every member of the Provincial Legislature, before taking his seat in the Chamber is required to take an appropriate oath before the Governor or some person appointed by him according to one of the forms set out in the Fourth Schedule to the Act.

Taking of Oath

No one can be a member of both the Chambers of the Legislature. If a person is chosen member of both the Chambers, his seat in one Chamber or the other falls vacant according to the rules made by the Governor.† In accordance with a Rule‡ in the Government of India (Provincial Legislative Assemblies) Order, 1936, if a person is elected to more than one seat in the Legislative Assembly of a Province then, unless within the prescribed time he resigns all but one of the seats, all the seats shall become vacant. A person cannot be a member of both the Federal Legislature and the Provincial Legislature. If a person is chosen a member of both and has not resigned his seat in the Federal Legislature, his seat in the Provincial Legislature falls vacant at the expiration of the period specified in the rules made by the Governor. A seat also falls vacant, if a member becomes disqualified to hold it, or resigns it. The Chamber may also declare vacant the seat of a member who absents himself without permission of the Chamber from all its meetings for sixty days. In computing this period of sixty days, no account can be taken of any period during which the Chamber is prorogued, or is adjourned for more than four consecutive days.§ Under this provision a seat was declared vacant in the United Provinces' Legislature, and a by-election was held to fill up the seat.

Membership of one Chamber only

Election to one seat only

Membership of one Legislature only

Vacancies

Privileges of the Members.— Freedom of speech is granted to the members in the Provincial Legislature subject to the provisions of the Act and to rules and

Freedom of Speech

No liability
in respect of
a speech
in the
Legislature

No discus-
sion of the
conduct of
any Judge

Governor's
power of
stopping
discussion

Other
Privileges

Punishment
of persons
who refuse
to give
evidence

No status of
a court

can make
laws for the
Province in
respect for
matters on

standing orders. No member of the Legislature is liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any Committee of the Legislature. No person is liable to any proceedings for the publication by or under the authority of a Chamber of a Legislature of any report, paper, vote or proceedings. The members, however, cannot discuss in a Provincial Legislature the conduct of any Judge of the Federal Court or of a High Court in the discharge of his duties.* Discussion cannot take place also if the Governor in his discretion certifies that the discussion of a Bill or of any clause or of any amendment would affect the discharge of his Special Responsibility for the prevention of any grave menace to the peace and tranquillity of the Province.* Other privileges of the members of the Provincial Legislature are to be such as may from time to time be defined by an Act of the Provincial Legislature; until that is done they are to be such as were immediately before the commencement of the Provincial Part of the Act, of 1935, *viz.*, before the 1st of April, 1937. An Act of the Provincial Legislature can also make a provision for the punishment after conviction by a court of persons, who refuse to give evidence or produce the necessary documents before a Committee of a Chamber when required by the Chairman of the Committee to do so. This Act shall have effect subject to the rules made by the Governor by the exercise of his individual judgment for regulating the attendance before such Committees of persons who are, or were in the service of the Crown in India, and safeguarding confidential matter from disclosure. No existing Indian law or the Constitution Act confers or empowers any Legislature to confer on a Chamber or on both Chambers in a joint sitting or any Committee or officer, of the Chamber, the status of a Court or any other punitive or disciplinary powers other than the power to remove or exclude persons breaking the rules or standing-orders of the Chamber or otherwise behaving in a disorderly manner in the Chamber.†

Powers and Functions of the Provincial Legislatures.—
A Provincial Legislature can make laws for the Province or for any part thereof; with respect to matters enumerated in the List II in the seventh

*Sec. 86. † Sec. 71. Exercising its powers under this Section, the Punjab Assembly passed a Sergeant-at-Arms Bill, providing for the appointment of a Sergeant-at-Arms to help the Speaker in the maintenance of order in the House. — 1 Sec. 99.

Schedule to the Act, called the Provincial Legislative List.* It has also concurrent power with the Federal Legislature to make laws with respect to any of the matters enumerated in the List III in the Seventh Schedule, called the Concurrent Legislative List.† It has further power to make laws with respect to any matter not enumerated in any of the Lists in the Seventh Schedule to the Act, if the Governor-General by public notification empowers it to do so.‡ In order to avoid inconsistency or conflict between the Federal laws and the Provincial laws regarding matters on the Concurrent Legislative List, it is laid down that the Federal law, whether passed before or after the Provincial law, is to prevail and the Provincial law is to be considered void to the extent of repugnancy. If, however, such a Provincial law, having been reserved for the consideration of the Governor-General or for the signification of His Majesty's pleasure, has received the Governor-General's or His Majesty's assent, the Provincial law is to prevail in that Province, though the Federal Legislature can at any time enact further law regarding the same matter§. As has been stated before, the Governor-General has the power to declare by a Proclamation of Emergency that a grave emergency exists whereby the security of India is threatened. In that case the Federal Legislature has the power to make laws for a Province with respect to matters on the Provincial Legislative List. If a Federal law passed in pursuance of this provision is in conflict with any provision of a Provincial law, the former is to prevail and the latter to the extent of repugnancy is to be considered void so long as such a Federal law remains in operation.|| In the Government of India Amendment Act which has been introduced in the House of Lords, an attempt has been made to widen the scope of this provision which only deals with powers of legislation. The new provision is calculated to extend the Federal executive authority over the Provinces in the event of emergency arising out of war.

Restrictions on the Powers of the Provincial Legislatures.—The Provincial Legislatures are not sovereign law-making bodies with unlimited powers; rather their authority extends over a definite sphere as has been described above. In addition to this, some other restrictions have been put on their powers under the provisions of the Act. No discussion can take

The Provincial Legislative List

Concurrent Powers

Residual Powers of Legislations

Inconsistency between Federal laws and Provincial laws

Power of the Federal Legislature to legislate if an emergency is proclaimed

Not sovereign law-making bodies

Introduction
of Bills

Passing of
Bills

Joint-sitting

General Procedure—Legislative.—It is provided that a Bill, other than a Finance Bill, may originate in either Chamber of the Legislature of a Province, where a Legislative Council exists.* A Bill is not deemed to have been passed by the Chambers of the Legislature of a Province having a Legislative Council, unless it has been agreed to by both Chambers without amendments or with such amendments only as may be agreed to by both the Chambers.† A Bill pending in the Provincial Legislature does not lapse by reason of the prorogation of the Chamber or Chambers. A Bill pending in the Legislative Council of a Province which has not been passed by the Legislative Assembly of that Province does not lapse on a dissolution of the Assembly. A Bill, which is pending in the Provincial Legislative Assembly, or having been passed by it is pending in the Provincial Legislative Council lapses on a dissolution of the Assembly.‡ The Governor may summon the Chambers to meet in a joint sitting for the purpose of deliberating or voting on a Bill, if after it has been passed by the Legislative Assembly and has been transmitted to the Legislative Council, is not presented to the Governor for his assent before the expiry of twelve months from the date of the reception of the Bill by the Council. If, however, the Bill relates to finance or affects the discharge of any of the Governor's Special Responsibilities, he may summon in his discretion the Chambers to meet in a joint sitting even before the expiry of the period of twelve months. In such joint sittings, a Bill with such amendments as are agreed to, is deemed to have passed by both the Chambers, if it is passed by a majority of the total number of members of both the Chambers present and voting. At such joint sittings only such amendments can be made which are made necessary by the delay in the passage of the Bill, unless it has been passed by the Legislative Council with amendments and returned to the Legislative Assembly. If the Bill has been so passed and returned by the Legislative Council, only such amendments can be proposed which are relevant to the matters with respect to which the Chambers have not agreed. The decision of the person presiding over such a joint sitting as to the admissibility of the amendments is final §.

* Sec. 73. † Sec. 74 (1). ‡ Sec. 73. § Sec. 74. A joint session of the two Houses was recently held in the United Provinces to consider the Court Fees Amendment Act, which was passed by the Legislative Assembly but was rejected by the Council. The Act was passed in the joint sitting because the Congress Party commanded a majority of votes in the joint sitting.

When a Bill has been passed by the Provincial Legislative Assembly or by both the Provincial Chambers where they exist, it is to be presented to the Governor, who in his discretion can declare his assent to it in His Majesty's name, or can withhold his assent, or can reserve it for the consideration of the Governor-General. He may in his discretion return the Bill with a message that the whole of it or some of its provisions should be reconsidered by the Provincial Chambers or that the latter should consider the desirability of introducing any such amendments as he may recommend in his message. When a Bill is so returned, the Chamber or Chambers must reconsider it as desired.* A Bill, which is reserved by a Governor for the consideration of the Governor-General, may be assented to in his discretion by the Governor-General in his Majesty's name or may be refused assent or may be reserved for the signification of His Majesty's pleasure. The Governor-General may also direct the Governor to return the Bill to the Provincial Chamber or Chambers together with a message similar to one which the Governor has a right to send. When a Bill is so returned, the Chamber or Chambers must reconsider it accordingly, and if it is again passed by them with or without amendment, it is to be presented again to the Governor-General for his consideration.† A Bill, which is reserved for the signification of His Majesty's pleasure, cannot become an Act of the Provincial Legislature, unless and until the Governor makes known by public notification within twelve months from the day on which that Bill was presented to the Governor that His Majesty has given his assent to the Bill. Any Provincial Act assented to by the Governor or the Governor-General may be disallowed by His Majesty within twelve months from the date of the assent. When any Act is so disallowed the Governor must at once make the disallowance known by public notification, and from that date the Act is to be considered void.‡

* Assent to Bills

Bills reserved for consideration

Power of the Crown to disallow Acts

Procedure in Financial matters. In every financial year, the Governor is to cause to be laid before the Chamber or the Chambers of the Legislature a statement of the estimated receipts and expenditure of the Province for that year, called the "Annual Financial Statement." The estimated expenditure in the statement is to show separately the sums required

Annual Financial Statement

* Sec. 75. † Sec. 76. ‡ Sec. 77.

to meet expenditure charged upon the revenue of the Province and the sums required to meet other expenditure from the revenues of the Province. The expenditure on the revenue account is to be distinguished from the other expenditure and the sums, if any, included solely because the Governor has directed their inclusion as being necessary for the proper discharge of any of his Special Responsibilities are also to be indicated. The expenditure charged on the revenues of the Province is not subject to the vote of the Legislature, while the other expenditure is subject to its vote. Any question whether any proposed expenditure is charged on the revenues of the Province is to be decided by the Governor in his discretion. The following expenditure is charged on the revenues of the Province:—

Expenditure charged on the revenues of the Province

(a) the salaries and the allowances of the Governor and other expenditure relating to his office for which provision is made by Order in Council;

(b) debt charges for which the Province is liable, including interest, sinking fund and redemption charges, expenditure relating to the raising of loans, and the service and redemption of debt;

(c) salaries and allowances of the Ministers and the Advocate-General;

(d) salaries and allowances of the High Court Judges;

(e) expenditure connected with the administration of Excluded Areas;

(f) any sum required to satisfy any judgment, decree or award of any court or arbitral tribunal;

(g) any other expenditure declared by the Constitution Act, or any Act of the Provincial Legislature to be charged on the revenues of the Province.*

Not subject to the vote of the Legislature

The charged expenditure is not to be submitted to the vote of the Legislative Assembly, or of the Council, where it exists, but can be discussed in the Legislature except expenditure relating to the salary and allowance of the Governor and the expenditure of his office.† The other expenditure that is not charged on the revenues of the Province is to be submitted in the form of demands for grants to the Legislative Assembly which has the power to assent, or to refuse to assent to any demand, or reduce the amount of any demand.†

Demands for grants

No demand for a grant can be made except on the recommendation of the Governor, who is the Head of

* Sec. 78, † Sec. 79.

the Executive.* This means that the Council of Ministers cannot themselves approach the House for the purpose without the concurrence of the Governor. If strictly enforced, this may mean that the Governor must know how the Ministers propose to spend money which they are asking for. Thus all reforms involving expenditure can only be introduced with his previous sanction given in this indirect way. But it must be admitted that this procedure is in conformity with the procedure followed in certain countries, including the United Kingdom.

Recom-
mendation of
the Gov-
ernor

After the voting on the demands, the Governor is to authenticate by signature a Schedule, specifying the grants made by the Assembly and the sums charged on the revenues of the Province, but not exceeding the sums shown in the original statement laid before the Chamber or Chambers. But if the Governor thinks that the refusal or reduction of any grant by the Assembly affects the due discharge of any of his Special Responsibilities, he may include in the Schedule any additional amount not exceeding the amount of the rejected demand or the reduction. This "Authenticated Schedule" is laid before the Assembly but is not open to discussion or vote in the Legislature. No expenditure from the revenues of the Province is authorised unless it is specified in this Authenticated Schedule.† If in any financial year, further expenditure from the revenues of the Province becomes necessary, the Governor is to cause to be laid before the Chamber or Chambers a "Supplementary Statement" of the estimated expenditure, and the same procedure as applied to the original "Statement" also applies to it. It shall be noticed here that unlike the United Kingdom, there is no annual Appropriation Act in India, and a resolution of the Legislature approving a demand for grant is sufficient authority for the appropriation.‡

Authentica-
tion of the
Schedule of
Authorised
Expenditure

Supplemen-
tary State-
ment of
Expenditure

The Provincial Legislature cannot consider, except on the recommendation of the Governor, a Bill or amendment which imposes or increases any tax, regulates the borrowing of money, or giving of any guarantee by the Province, or amends the law regarding any financial obligation of the Province, or declares any expenditure to be charged on the revenues of the Province, or increases the amount of any charged

Special pro-
visions in
respect of
Financial
Bills

* Sec. 79. † Sec. 80 ‡ Sec. 81.

expenditure. A Bill, however, is not considered to be doing anything mentioned above if it provides for the imposition of fines or any other pecuniary penalties, or for the demand and payment of fees for licences or fees for services rendered. A Bill, whose enactment and enforcement involves expenditure from the revenues of the Province, cannot be passed by a Chamber unless its consideration has been recommended to the Chamber by the Governor.*

Educational grants for the Europeans and the Anglo-Indians

Special provision has been made with respect to educational grants for the Anglo-Indian and the European communities. It is in the nature of a sort of safeguard, but this is in addition to the other safeguards secured to all the minorities by reason of the Governor's Special Responsibility to protect the legitimate interests of all minorities, the reservation of seats in the Legislature, and also regarding appointments in the Railway, Customs, Postal and Telegraph Services. In the First Schedule to the Act, a European is taken to mean a person whose father or any of whose other male progenitors in the male line is or was of European descent and who is not a native of India. An Anglo-Indian is taken to be a person whose father or any of whose other male progenitors in the male line is or was of European descent, but who is a native of India. The special provisions in respect of these communities stipulate that if in the last complete financial year, before the introduction of the Provincial Autonomy, a grant for the benefit of the Anglo-Indian and European Communities or either of them was included in the grants made in the Province for education, then in each subsequent financial year a grant shall be made for the benefit of these communities, which shall not be less than the average of the grants made for their benefit in the ten financial years ending on 31st March, 1933, unless the Provincial Legislative Assembly decides to the contrary by a majority of at least three-fourths of the members of the Assembly. The above is subject to the provision that if in any financial year the total grant for education in the Province is less than the average of the total grants for education in the Province for the ten financial years as mentioned above, then the grant made for the benefit of these communities need not exceed the fraction which the total grant for the year forms of the average of the grants for the ten financial years as

* Sec. 82. † Sec. 83.

mentioned above. In the grants thus made, grants for capital purposes are to be included. These provisions are to cease to have effect in a Province, if at any time the Provincial Legislative Assembly decides to that effect by a majority of at least three-fourths of the members of the Assembly.*

Rules for the Conduct of Business.—The Chambers of the Provincial Legislature may make rules for regulating their procedure and the conduct of their business, subject to the provisions of this Act. The Governor in his discretion is empowered to make rules in respect of the Legislative Assembly or the Legislative Council for regulating the procedure of and the conduct of the business in the Chamber regarding any matter which affects the discharge of his functions to be performed in his discretion or by the exercise of his individual judgment; for securing the timely completion of financial business; for prohibiting the discussion of or the asking of questions on any matter connected with any Indian State, unless the Governor in his discretion is satisfied that the matter affects the interests of the Provincial Government or of a British subject ordinarily resident in the Province, and has given his consent for the discussion or the asking of the questions; for prohibiting, except with the consent of the Governor, to be given in his discretion, the discussion of or the asking of questions on any matter connected with the relations between His Majesty or the Governor-General and any foreign State or Prince; or on matters connected with the Tribal Areas or arising out of or affecting the administration of Excluded Area, except their expenditure, or in respect of the personal conduct of the Ruler of any Indian State or of a member of the Ruling family of any Indian State. If any rule so made by the Governor is inconsistent with any rule made by the Legislature, the rule made by the Governor prevails. In a Province, where there is a Legislative Council, the Governor after consulting the Speaker of the Assembly and the President of the Council may make rules regarding procedure with respect to joint sittings of and communications between the two Chambers. It is laid down that until rules are made as described above, the rules of procedure and standing orders with respect to the Legislative Council of the

Rules may be made by the Chambers

Governor's power to make rules in respect of certain matters

Previous Rules to apply in the absence of the new Rules

Province in force before the introduction of the Provincial Part of the Act, shall apply to the Legislature of the Province with modifications and adaptations that may be made by the Governor in his discretion. The Punjab Assembly has formulated a new set of rules in pursuance of this provision. They have been brought into force only recently. At a joint sitting of the two Chambers, the President of the Legislative Council, or in his absence, any person determined by rules of procedure presides.*

President of
the joint-
Sittings

English to
be the offi-
cial language

It is provided that all proceedings in the Legislature of the Province should be conducted in the English language, but rules of procedure are to provide for enabling persons unacquainted, or not sufficiently acquainted with the English Language to use another language.† The hardship that this provision causes is becoming more and more apparent with the actual working of the Provincial Legislatures. The subject has already been discussed in the foregoing pages.†

Legislative Powers of the Governor.—The Governor, like the Governor-General in the federal sphere, is an integral part of the Provincial Legislature. He has to perform certain special functions, and has therefore been armed with certain special powers to deal with different situations that might arise. He has got such powers in the executive and the financial spheres, which have been described above. The Act also vests him with certain special powers in the Legislative sphere. Under the provisions of the Act, he can issue Ordinances, and promulgate Governor's Acts. These Ordinances are of two kinds. He can issue an Ordinance, when the Legislature of a Province is not in session, and he is satisfied that circumstances exist which render it necessary for him to take immediate action. He is to exercise his individual judgment, if the Ordinance to be issued is one, which as a Bill would have required his own previous sanction or of the Governor-General. Further, if any such Ordinance as a Bill would have required the Governor-General's previous sanction for its introduction in the Provincial Legislature, or which he would have reserved as a Bill for the consideration of the Governor-General, it cannot be promulgated without instructions from the Governor-General, acting in his discretion. This Ordinance has the same force and effect as an Act of the Provincial

Powers to
issue Ordin-
ances

Power of the
Governor to
promulgate
Ordinances
during the
recess of the
Legislature

Legislature passed in the usual way, but it must be laid before the Provincial Legislature and ceases to have effect after the expiration of six weeks from the reassembly of the Legislature, or if, before the expiry of that period, a resolution disapproving it is passed by the Legislative Assembly and is agreed to by the Legislative Council where it exists. It is subject to the power of His Majesty to disallow Acts and can be withdrawn at any time by the Governor. It is void, if it makes any provision which is not valid, if enacted in any Act of the Provincial Legislature.*

Besides, the Governor can issue another kind of Ordinance at any time with respect to certain subjects touching his functions to be discharged in his discretion or by the exercise of his individual judgment, if the circumstances make it necessary. Such an Ordinance can continue to operate for not more than six months as may be specified, but can be extended for a further period, not exceeding six months, by a subsequent Ordinance. This Ordinance has the same force and effect as an Act of the Provincial Legislature passed in the ordinary way, but can be disallowed by His Majesty like an ordinary Act, and can be withdrawn at any time by the Governor. But if it is an Ordinance extending a previous Ordinance for a further period, it must be communicated forthwith to the Secretary of State through the Governor-General; and the Secretary of State is required to place it before each House of Parliament. Such an Ordinance is not valid if it makes any provision which would not be valid if enacted in an Act of the Provincial Legislature. For the purposes of the provisions of the Act in respect of the repugnancy of an Act of the Provincial Legislature to an Act of the Federal Legislature, such an Ordinance shall be considered to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.†

The Governor is to exercise his powers for the purpose in his discretion; but he is to exercise these powers only with the concurrence of the Governor-General in his discretion. But if it appears to the Governor that it is not practicable to obtain in time the concurrence of the Governor-General, he may promulgate an Ordinance without

Promulga-
tion of
Ordinances
at any time

Concurrence
of the
Governor-
General

* Sec. 88. † Sec. 89.

his concurrence; but in this case the Governor-General may direct, in his discretion, the Governor to withdraw the Ordinance, which shall be withdrawn accordingly.

Power of the Governor to enact Acts

In addition to the power of issuing Ordinances of the above types, the Governor has been vested with powers to enact Acts, called the Governor's Acts under certain circumstances. If the Governor thinks that for the purpose of discharging the functions satisfactorily in respect of those matters subject to his discretion or to his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or the Chambers of the Legislature, explain the circumstances which make such legislation necessary, and then enact forthwith a Governor's Act containing the necessary provisions, or attach to his message a draft of the Bill which he considers necessary. In the latter case he may enact the Bill as a Governor's Act, either in the same form or with necessary amendments after the expiry of one month, but before enacting the Act he shall consider any address presented to him by the Chamber or the Chambers or any amendments suggested by them within the stipulated period. Such a Governor's Act has the same force and effect as an ordinary Act of the Provincial Legislature, is subject to disallowance as an ordinary Act, and is void if it enacts provisions which would not be valid if enacted in an ordinary Act of the Legislature. For the purposes of the provisions contained in this Act in respect of the repugnancy of a Provincial Act to that of a Federal Act, such a Governor's Act is to be considered as an Act reserved for the consideration of the Governor-General and assented to by him. Every such Governor's Act is to be communicated forthwith through the Governor-General to the Secretary of State, and must be laid before each House of Parliament by the latter. The Governor is to perform the functions in connection with the Governor's Act in his discretion, but he is not to exercise any of his powers in this connection except with the concurrence of the Governor-General in his discretion.*

* Sec. 90.

Provisions in Case of Failure of the Constitutional Machinery.—Like the Governor-General in the federal sphere, the Governor in the provincial sphere has been assigned special powers to cope with a contingency arising out of the failure or break-up of the constitutional machinery. It is provided that if at any time, the Governor is satisfied that a situation has arisen in which the government of the Province cannot be carried on in accordance with the provisions of the Act of 1935, he may issue a Proclamation, declaring that the functions, to the extent as may be specified, shall be exercised by him in his discretion, and he may thereby assume to himself all or any of the powers of any Provincial body or authority except the High Court, whose powers cannot be assumed by the Governor under the Act. Such a Proclamation may be revoked or varied by a subsequent Proclamation. But such a Proclamation must be communicated forthwith to the Secretary of State, who shall lay it before each House of Parliament. Unless it is a Proclamation revoking a previous Proclamation, it shall cease to operate at the expiration of six months. This is subject to the provision that, if and so often as both the Houses of Parliament approve its continuance by a resolution, it shall remain in force for a further period of twelve months. Under Parliamentary sanction such a Proclamation can remain in force for not more than three years. Any laws made by the Governor, when such a Proclamation is in force, has effect until two years have elapsed from the date on which the Proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the appropriate Legislature. Such a law is included when a reference is made in the Constitution Act to Provincial laws. The Governor is to exercise his functions in this connection in his discretion, but no Proclamation can be made by the Governor under this provision without the concurrence of the Governor-General in his discretion.*

It shall be noticed that the powers of the Governors and the Governor-General are similar in their respective spheres and provide against similar contingencies. The remarks that have already been made above† in that connection also apply in a

Power to issue Proclama-tions

To be communi-cated to the Secretary of State

Duration

Encroachment on the spirit of Provincial Autonomy

general way to the powers assigned to the Governors. As has been pointed out above, in certain cases these powers may be necessary, but they certainly militate against the spirit of Provincial Autonomy and the principle of the responsibility of the Executive to the Legislature. In the ultimate resort the popular Provincial Legislatures and the Provincial Councils of Ministers can be reduced to nullities by the exercise of these powers by the Governors. Generally speaking, some such safe-guards are also found in the Constitutions of the other countries to meet with emergencies, but there these powers are generally exercised on the advice of the responsible Ministers. In the case of the Indian Provinces, however, the Governors can ignore their Ministers altogether if they like, which is certainly very objectionable from the constitutional point of view, but perhaps it is necessary on account of the special circumstances prevalent in India, arising out of mutual distrust between the forces of Indian nationalism and of British imperialism. The powers regarding the break-down of the constitutional machinery assigned to the Governors are perhaps necessary in view of a real danger of the break-down or the wrecking of the Constitution which was till recently the declared policy of a very influential political party in the country. But as is already pointed out, these provisions cannot provide against the danger of the constitutional break-down for more than three years during which time a solution of the crisis may or may not be found.

Good Work

Actual Working.—The actual working of the Provincial part of the Act has dispelled many fears and forebodings. As a result of the understanding or the gentleman's agreement, as Mahatma Gandhi once put it, that subsists between the Governors and the Ministers, the parties seem to understand their proper spheres of work. The Provincial Legislatures have shown a surprising sense of responsibility and a desire to do good to the people while remaining within the four corners of the Constitution. Many useful laws have been passed in the different Provinces; and no attempt has been made so far to wreck the Constitution. The Governors have not been called upon to use their special powers in respect of legislation. No Ordinance has so far been issued by any Provincial Governor

No use of Special Powers

against the wishes of the Ministers, nor has any Governor's Act been enacted in any Province. Only one Ordinance has so far been issued, and this was done by the Governor of Bengal with the concurrence of his Ministers in order to enforce temporarily a Tenancy Bill passed by the Legislature before giving final assent to it. It is, therefore, hoped that these special powers of the Governors will fall in disuse in course of time so as to allow complete scope to the development and growth of the Provincial Autonomy.

APPENDIX VI

Provincial Legislative List

1. Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organization of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention.
2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.
3. Police, including railway and village police.
4. Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other units for the use of prisons and other institutions.
5. Public debt of the Province.
6. Provincial Public Services and Provincial Public Service Commissions.
7. Provincial pensions, that is to say pensions payable by the Province or out of Provincial revenues.
8. Works, lands and buildings vested in or in the possession of His Majesty for the purposes of the Province.
9. Compulsory acquisition of land.
10. Libraries, museums and other similar institutions controlled or financed by the Province.
11. Elections to the Provincial Legislature, subject to the provisions of this Act and of any Order in Council made thereunder.
12. The salaries of the Provincial Ministers, of the Speaker and Deputy Speaker of the Legislative Assembly; and if there is a Legislative Council, of the President and Deputy President: the salaries, and privileges of the members of the Provincial Legislature and, to such extent as is expressly authorised by Part III of this Act, the punishment of persons who refuse to give evidence or produce documents before Committees of the Provincial Legislature.
13. Local government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
14. Public health and sanitation: hospitals and dispensaries; registration of births and deaths.
15. Pilgrimages, other than pilgrimages to places beyond India.
16. Burials and burial grounds.
17. Education.
18. Communications, that is to say, roads, bridges, ferries, and other means of communication not specified in the Federal List; minor railways subject to the provisions of the Federal List with respect to such railways; municipal tramways; ropeways, inland waterways and traffic thereon; subject to the provisions of Con-

PROVINCIAL LEGISLATIVE LIST

105

current Legislative List with regard to such waterways ; ports subjects to the provisions in Federal List with regard to major ports ; vehicles other than mechanically propelled vehicles.

19. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power.

20. Agriculture, including agricultural education and research, protection against pests and prevention of plant diseases ; improvement of stock and prevention of animal diseases ; veterinary training and practice ; pounds and the prevention of cattle trespass.

21. Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection of rents ; transfer, alienation and devolution of agricultural land ; land improvement and agricultural loans ; colonization ; Courts of Wards ; encumbered and attached estates ; treasure trove.

22. Forests.

23. Regulation of mines and oilfields and mineral development subject to the provisions of Federal List with respect to regulation and development under Federal control.

24. Fisheries.

25. Protection of wild birds and wild animals.

26. Gas and gasworks.

27. Trade and commerce within the Province ; markets and fairs ; money lending and money lenders.

28. Inns and innkeepers.

29. Production, supply and distribution of goods : development of industries, subject to the provisions in Federal List with respect to the development of certain industries under Federal control.

30. Adulteration of foodstuffs and other goods ; weights and measures.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of Federal List and, as respects poisons and dangerous drugs, to the provisions of Concurrent Legislative List.

32. Relief of the poor, unemployment.

33. The incorporation, regulation, and winding up of corporations other than corporations specified in the Federal List ; unincorporated trading, literary, scientific, religious and other societies and associations ; co-operative societies.

34. Charities and charitable institutions ; charitable and religious endowments.

35. Theatres, dramatic performances and cinemas, but not including the sanction of cinematograph films for exhibition.

36. Betting and gambling.

37. Offences against laws with respect of any of the matters in this list.

38. Inquiries and statistics for the purpose of any of the matters in this list.

39. Land revenue, including the assessment and collection of revenue, the maintenance of land records, survey for revenue purposes and records of rights, and alienation of revenue.

40. Duties of excise on the following goods manufactured or produced in the Province and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India—

(a) alcoholic liquors for human consumption ;

(b) opium, Indian hemp and other narcotic drugs and narcotics ; non-narcotic drugs ;

(c) medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

41. Taxes on agricultural income.

42. Taxes on lands and buildings, hearths and windows.

43. Duties in respect of succession to agricultural land.

44. Taxes on mineral rights, subject to any limitations imposed by any Act of the Federal Legislature relating to mineral development.

45. Capitation taxes.

46. Taxes on professions, trades, callings and employments.

47. Taxes on animals and boats.

48. Taxes on the sale of goods and on advertisements.

49. Cesses on the entry of goods into a local area for consumption, use or sale therein.

50. Taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

51. The rates of stamp duty in respect of documents other than those specified in the provisions of the Federal List with regard to rates of stamp duty.

52. Dues on passengers and goods carried on inland waterways.

53. Tolls.

54. Fees in respect of any of the matters in this list, but not including fees taken in any Court.*

* In the Government of India Act Amendment Bill which has been introduced in the House of Lords, certain additions are proposed to be made to the subjects on the Provincial List Entry No.17 above is sought to be enlarged as Education including Universities other than the Benares Hindu University and the Aligarh Muslim University, which are Federal subjects. Two more taxes are proposed to be added to the Provincial List, e.g., taxes on vehicles suitable for use on roads, whether mechanically propelled or not, and taxes on the consumption or sale of electricity. A new clause is proposed to give exemptions from taxes on electricity.

CHAPTER IX

THE EXCLUDED AREAS AND THE PARTIALLY EXCLUDED AREAS

The Backward Areas ; General Principles observed ; Declaration of the Excluded and the Partially Excluded Areas ; the Excluded Areas ; The Partially Excluded Areas ; Changes in the Extent and Nature of these Areas ; Administration of the Excluded Areas and the Partially Excluded Areas.

The Backward Areas.—The Constitution Act makes provision for the declaration of certain areas in the Provinces as " Wholly Excluded Areas," and " Partially Excluded Areas." As far as the Act is concerned, they mean such areas as His Majesty may by Order in Council declare to be such.* These areas are certain backward areas in the Provinces, whose transfer to responsible provincial control is not considered safe for one reason or another. The Act of 1919 treated certain areas as " Backward Tracts," which were excluded from the operation of the Reforms granted by that Act. Under the provisions of that Act, the Governor-General in Council could declare any territory in British India to be a " Backward Tract " and could, with the sanction by notification of the Secretary of State, direct that the Government of India Act 1919 shall apply to that territory subject to such exceptions and modifications as may be prescribed in the notification.† When such a notification had been issued, the Governor-General could direct that any Act of the Indian Legislature was not to apply to the territory in question or was to apply to it subject to the prescribed qualifications and modifications. The Governor-General could empower the local Governors to give similar directions in respect of Provincial laws. Thus these " Backward Tracts " were more or less under the executive and legislative control of the Governor-General in Council and the Provincial Governors. The Simon Commission changed the name of these " Backward Tracts " to " Excluded Areas," and recommended that the administration of such Areas should vest with the Central Government. The J.P.C., however, proposed that they should remain

The Excluded Areas ;
and the
Partially Excluded Areas

Position
under the
Act of 1919

Simon Com
mission's
Proposal

J. P. Com
mittee's
Proposal

* Sec. 91 (1). † Sec. 52 (a, 2) Act of 1919.

with the Provinces, but should constitute the Special Responsibility of the Governors as far as the "Partially Excluded Areas" are concerned, while the "Excluded Areas" should be reserved to his discretion, beyond the advice of his Ministers. The Committee observed :

" It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an " Excluded Area " or a "Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration ; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion, to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. . . . We think, however, that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to or the framing of Regulations for, Partially Excluded Areas is an executive act which might appropriately be performed by the Governor on the advice of his Ministers, the decisions taken in each case being of course, subject to the Governor's Special Responsibility for Partially Excluded Areas, that is to say, being subject to his rights to differ from the proposals of his Ministers, if he thinks fit. " *

General Principles Observed.—Thus the Act provides for the Excluded Areas and the Partially Excluded Areas. The general principles followed in declaring an Area as a wholly Excluded Area were that there was an enclave or a definite tract of country inhabited by a compact aboriginal population, or that these areas were border tracts in certain Provinces, or were areas which were isolated from the normal life and administration of the Province on account of their geographical situation. Where the aboriginal population was mixed up with the rest of the agricultural communities but were in sufficient numbers, the area was declared to be Partially Excluded Area. Explaining the principles regarding the selection of these Areas, Dr. J. H. Hutton said :—

“ Exclusion was not based in the case of Assam on the ground of Educational Backwardness. The reason was that there was a clash of interest between hill and plains people and the former feared that the majority vote would seriously affect their economic interest in the matter of legislation relating to land revenue, forests and fisheries.

As regards the islands of South Indis, no elected representative would be able to keep in touch with a constituency 125 to 250 miles in the sea, where even the Collector paid a visit once in two years

Aboriginal Population ;
Border Tracts ;
Isolation

Dr. J H.
Hutton's
Explanation

The language and dialect difficulties were enormous. In some villages the language spoken differed even from street to street.

Further, to legislate against the primitive customs of hill tribes was to court rebellion which in such areas was always feared and proved very costly.*

The Areas have been selected with the idea of over-excluding rather than under-excluding, and therefore include more extensive territory than under the Act of 1919. Provision however is made for declaring the Wholly Excluded Area to be Partially Excluded Area, and to bring the Partially Excluded Area under the control of normal administrative machinery. Indian opinion has expressed itself, generally speaking, against declaring extensive areas as Excluded Areas, or as Partially Excluded Areas, and particularly it seems to suggest that such Areas ought to have been decreased rather than increased under the new Act. It is a sad commentary of the system of government established in these Areas that the tribal people living in these Areas are at much the same stage of civilization to-day as they were some 150 years ago when they were brought under the rule of the British. In the words of Dr. Z. A. Ahmad.

"Nearly 15 million inhabitants of India have been preserved in a state of semibarbarism, devoid education, medical facilities and other amenities of civilised life so that they may never develop a consciousness of their political and economic rights and learn to struggle in an organized and systematic manner against their innumerable wrongs."†

One may or may not agree with this opinion, and one may also accept that the problem of these backward tribal areas is not very simple. Perhaps it is not possible to establish the modern machinery of government and laws among these people who do not understand them. But the question is for how long are these relics of the pre-historic times to be preserved? Why should these 15 million inhabitants of India be condemned to a life, which is to say the least, barbaric? Why should they be shut out from the normal life of the people of the country? If no satisfactory answer can be given to any of these questions, it is clear that it is the humane and patriotic duty of Indians of the advanced classes to modernize them and carry the blessings of civilization to them.

Over-exclusion

Indian opinion

* Speech in the Central Assembly. † Congress Political and Economic Studies—No. 4.

with the Provinces, but should constitute the Special Responsibility of the Governors as far as the "Partially Excluded Areas" are concerned, while the "Excluded Areas" should be reserved to his discretion, beyond the advice of his Ministers. The Committee observed :

" It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an " Excluded Area " or a "Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration ; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion, to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. . . . We think, however, that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to or the framing of Regulations for, Partially Excluded Areas is an executive act which might appropriately be performed by the Governor on the advice of his Ministers, the decisions taken in each case being of course, subject to the Governor's Special Responsibility for Partially Excluded Areas, that is to say, being subject to his rights to differ from the proposals of his Ministers, if he thinks fit. " *

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Over-exclusion

Indian opinion

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If it is so, the question is how can this be done best, whether by keeping them under irresponsible, autocratic control or by bringing them under the jurisdiction of the popular Ministers who are, at least, the countrymen of these people? It may not be possible to establish full responsible government among these tribal people, yet earnest attempts should be made to modernise them and preferably through Indian Ministers who are likely to take greater interest in their welfare than the members of irresponsible bureaucracy.

It has been suggested that these Areas have been excluded from the normal control of the responsible Ministers not because they are educationally or politically backward, but with the idea of controlling the mineral and other resources of these areas in the interest of foreign capital. The Indian National Congress at its annual session at Faizpur declared itself against this through the following resolution :

" This Congress is of opinion that the creation of " Excluded " and " Partially Excluded Areas " and Chief Commissioner's Provinces including British Baluchistan, from the 1st January 1937, and covering the area of 207,900 square miles and inhabited by 13 million people is yet another attempt to divide the people of India into different groups with unjustifiable and discriminatory treatment and to obstruct the growth of uniform democratic institutions in the country.

" This Congress is further of opinion that the separation of these " Excluded " and " Partially Excluded Areas " is intended to leave a larger control of disposition and exploitation of the mineral and forest wealth in those Areas and keep the inhabitants of those Area apart from the rest of India for their easier exploitation and suppression.

" This Congress holds that the same level of democratic and self-governing institutions should be applicable to all parts of India without any distinction."

Recently, of the Provincial Legislatures, the Bihar Legislature took the lead in condemning this system through a resolution. The question deserves greater attention of the leaders of thought and opinion in the country.

It is hoped that the successful working of the self-government in the Provinces will also affect these Areas and that in the near future they shall also be brought in line with the other advanced parts of the Provinces.

Declaration of the Excluded and the Partially Excluded Areas—It is provided in the Act that His Majesty may at any time by Order in Council declare certain areas to be Excluded Areas or Partially Excluded Areas.* The Secretary of State was to place the draft of such an Order, which it is proposed to recommend His Majesty to make, before Parliament, within six months from the passing of this Act. Such an Order in Council was made on the 3rd of March, 1936, and the following areas were declared Excluded Areas and Partially Excluded Areas.

Order in
Council

The Excluded Areas.

Madras. The Laccadive Islands (including Minicoy) and the Amindivi Islands.

Bengal. The Chittagong Hill Tracts.

The Punjab. Spiti and Lahaul in the Kangra District.

Assam. The North East Frontier (Sadiya, Balipara and Lakhimpur) Tracts.

The Naga Hills District.

The Lushai Hills District.

The North Cachar Hills Sub-division of the Cachar District.

The North-West Frontier Province. Upper Tanawall in the Hazara District.

The Partially Excluded Areas

Madras. The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

Bombay. In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal; and the villages belonging to the following Mehwassi Chiefs, namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur (4) the Walvi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forests areas of the East Khandesh District.

The Kalvan Taluk and Peint Petha of Nasik District.

The Dahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thanna District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahals District.

Bengal. The Darjeeling District.

The Dewanganj, Sribardi, Nalitabari, Haluaghata, Durgapur and Kalmakanda police stations of Mymensingh District.

The United Provinces. The Janusar-Bawar pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur range.

* Sec. 91.

Bihar. The Chota Nagpur Division.
The Santal Parganas District.

The Central Provinces and Berar. In the Chanda District, the Abiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapara, Kbutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Fai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partapgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra ; Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabaras and Ambagarh Chauki.

Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat taluk of the Amracti District.

The Bhainsdehi Tahsil of the Betul District.

Assam.

The Garo Hills District.

The Mikir Hills (in the Nowgong and Sibsagar Districts).

The British portion of the Khasi and Jaintia Hills District, other than the Shillong Municipality and Cantonment.

Orissa.

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

Changes in the Extent and Nature of these Areas.—
His Majesty is empowered at any time to direct by an Order in Council that the whole or any specified part of an Excluded Area shall become, or become part of, a Partially Excluded Area; or that the whole or any specified part of a Partially Excluded Area shall cease to be a Partially Excluded Area or a part of such an Area. He can also alter any Excluded or Partially Excluded Area but only by way of rectification of boundaries; or he can declare any territory not previously included in any Province to be, or to form a part of, an Excluded Area or a Partially Excluded Area in the case of an alteration of the boundaries of a Province or the creation of a new Province. Any such Order may contain the necessary incidental and consequential provisions. But the Order in Council made on March 3rd, 1936, which has declared certain

areas to be Excluded Areas and Partially Excluded Areas, cannot be varied by any subsequent Order except as described above.*

It shall be noticed that though any area could be declared as Excluded and Partially Excluded Area in the Order in Council which has already been issued, no further additions can subsequently be made. His Majesty, however, can change the status of the Excluded Area to that of a Partially Excluded Area and make the Partially Excluded Area subject to the normal administrative machinery. He can alter the boundaries of such Areas only by way of rectification and can declare any territory not previously included in the list of Excluded Areas or the Partially Excluded Areas to be such only when new Provinces are created or the boundaries of a Province are altered, but not otherwise.

Administration of the Excluded Areas and the Partially Excluded Areas.—The executive authority of a Province extends to the Excluded and the Partially Excluded Areas in that Province. But no Act of the Federal Legislature or of the Provincial Legislature applies to an Excluded Area or a Partially Excluded Area, unless the Governor directs that by Public Notification. In doing that the Governor may direct that a particular Act shall apply to the Area as a whole or to a part of it subject to such exceptions or modifications as he thinks fit. The Governor may himself make Regulations for the peace and good government of any Excluded or Partially Excluded Area in a Province. These Regulations may repeal or amend any Federal or Provincial law or any existing Indian law which may be applicable to the Area in question. These Regulations, however, are to be submitted forthwith to the Governor-General and can not have effect until assented to by him in his discretion. They are also subject to the power of disallowance of His Majesty.†

The Governor is to exercise his functions regarding Excluded Areas in his discretion, which means not subject to the advice of his Ministers. His functions regarding Partially Excluded Areas are to be performed by him by the exercise of his individual judgment, which means subject to the advice of the Ministers, though that advice may be ignored by him.

Summary

Federal and
Provincial
laws not
applicable
automati-
callyPower of
the Governor
to make
RegulationsExercise of
his powers
by the
Governor

* Sec. 91. † Sec. 92.

CHAPTER X

THE CHIEF COMMISSIONERS' PROVINCES

The Governors' Provinces and the Chief Commissioners' Provinces. British Baluchistan ; the Andaman and Nicobar Islands ; Coorg ; General ; Panth Piploda ; Aden.

Units of the Federation

The Governors' Provinces

The Chief Commissioners' Provinces

Administration of Chief Commissioners' Province

The powers of the Governor-General

The Governors' Provinces and the Chief Commissioners' Provinces.—There are two kinds of Provinces under the Government of India Act, 1919—the Governors' Provinces and the Chief Commissioners' Provinces. As has been noticed above, the Governors' Provinces as well as the Chief Commissioners' Provinces are to be the units of the Federation of India along with those States that might accede to the Federation. Provincial Autonomy is to be established in the Governors' Provinces under the provisions of the Act, which means that these Provinces shall be more or less self-contained legislative and administrative units ; but the Chief Commissioners' Provinces are to stand on altogether different footing. Under the Act, Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, and Sind are recognized as Governors' Provinces. The Chief Commissioners' Provinces include British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman and Nicobar Islands, and the area known as Panth Piploda. Other Chief Commissioners' Provinces may be created under this Act. Aden has been separated from India under the Provisions of the Act.

A Chief Commissioner's Province is to be administered directly by the Governor-General acting to such extent as he thinks fit, through a Chief Commissioner to be appointed by him in his discretion.*

British Baluchistan.—In directing and controlling the administration of British Baluchistan, the Governor-General acts in his discretion. The executive authority of the Federation, however, extends over British Baluchistan as over other Chief Commissioners'

* Sec. 94.

Provinces, but no act of the Federal Legislature has application to it unless the Governor-General directs by Public Notification to be issued at his discretion, and in doing so he may provide for such exceptions and modifications as he thinks fit. He is also empowered at his discretion to make Regulations for the peace and good government of British Baluchistan. These Regulations have the same force and effect as an Act of the Federal Legislature applying to this Province and may repeal or amend any Federal law or any Indian law applicable to the Province. Such Regulations are subject to the power of His Majesty to disallow Acts passed by the Indian Legislature.*

Making of
Regulations

The Andaman and Nicobar Islands.—The Governor-General has similar powers and authority to make Regulations for the peace and good government of the Andaman and Nicobar Islands as for British Baluchistan.†

Governor-
General's
power of
making
Regulations

Coorg.—In Coorg the existing Legislative Council with its present constitution, powers, and functions, and the present arrangements respecting revenue collections and expenses is to continue without any change.‡

The existing
Legislative
Council to
continue

General.—The rules applicable to the Governors' Provinces with respect to the police rules and crimes of violence intended to overthrow the government, and provisions relating to the non-disclosure of certain records and information have application in the Chief Commissioners' Provinces, though in their case the place of Governors and Provincial Legislatures is to be taken up by the Governor-General and the Chambers of the Federal Legislature.§

Provisions in
respect of
police rules
and crimes
of violence

Except the area known as Panth Piploda, which has been raised to the status of a Chief Commissioner's Province by the Act of 1935, the other Chief Commissioner's Provinces had the same status before the passing of the present Act. They are units in the Federation of India, but unlike the Governors' Provinces, the executive and the legislative authority (except in the case of British Baluchistan) of the Federation extends over them. This authority, it seems, is to be exercised by the Governor-General not at his discretion but on the advice of his Federal Ministers.

Subject to
the executive
and legisla-
tive authority
of the
Federation

* Sec. 95. † Sec. 96. ‡ Sec. 97. § Sec. 98.

This is, however, subject to the exception that the authority regarding British Baluchistan and the Andaman and Nicobar Islands is to be exercised by the Governor-General at his discretion. Regarding other areas, the Federal Legislature has powers to make laws on any subject without any restriction.

Provision for representation

Delhi and Ajmer-Merwara have been given representation in the Federal Legislature. Delhi has been given the power to elect one member to a General Seat in the Council of State and two members to the Federal Assembly, one of them from a General constituency and the other from a Mohammadan constituency. Ajmer and Merwara shall return one member each to the Federal Council of State and to the Federal Assembly from the General constituency. British Baluchistan shall be represented in the Federal Legislature by two Mohammadan members, one in the Upper House and one in the Lower House.

Coorg is also given representation in the Federal Legislature by the election of one member by the Coorg Legislative Council for the Federal Assembly and one for the Council of State through a territorial constituency for the General Seat. Andaman and Nicobar Islands have not been given any representation in the Federal Legislature.

Panth Piploda.—It is a small area about 19 square miles in Malwa in Central India, with a population of about four thousand and revenue nearing rupees 15,000. So far the government of this area was carried on by the Political Agent at Malwa under the authority of the Agent to the Governor-General in Central India. It is held by a Chief, called Pandit, without any proprietary rights, though it is a British territory. Under this Act, it is raised to the status of a Chief Commissioner's Province.

CHAPTER XI

ADMINISTRATIVE RELATIONS BETWEEN THE FEDERATION, THE PROVINCES, AND THE STATES

Need for change ; Exercise of authority by the Federation and the Units ; Administration of Federal Laws ; Acquisition of land for Federal purposes ; Broadcasting ; Interference with Water Supplies ; Inter-Provincial Co-operation.

Need for Change—The Government of India Act, 1935 introduces a great change in the nature and structure of the government of the country both at the Centre and in the Provinces. It changes the government of the country from a unitary to a Federal basis and introduces responsible and autonomous government in the Provinces. This necessitated a complete re-adjustment of the relations between the Federal and the Provincial Governments. In the words of the J. P. C. :

" Now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and its constituent units. We are impressed by the possible dangers of a too strict interpretation of the principle of Provincial Autonomy. The Statutory Commission in their recommendations for Provincial Autonomy were, we think, not un-affected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend the responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre."*

There was obviously a need for the establishment of new administrative relationship between the Federation and its constituent units, consistent with the whole scheme of government. This has been done in the Act. The J.P.C. observed :

" The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and, subject to such reservation as may be contained in the Rulers Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of these laws may be vested in the Federation itself and in Federal officers ;

From
Unitary to
Federal
State

J.P.C.'s
observations

Administrative
nexus
between the
Federation
and the
units

J.P.C.'s
observations

* Para 218.

Duty of Provincial Governments to give effect to Federal laws

Obligation of units and Federation

Governors to act as agents of the Governor-General

Power of the Governor-General to confer powers on the units

Payment to cover extra cost of administration

subject, in the case of the States, to the terms of the Ruler's Instrument of Accession ; or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the law on behalf of the Federal Government.*

Exercise of Authority by the Federation and the Units.—It is provided in the Act that the executive authority of every Province and a Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature, which apply in that Province or State. But in the exercise of the executive authority of the Federation in any Province or a Fed-rated State, regard shall be had to the interests of that Province or State †

The Governor-General can direct any Provincial Governor to discharge, as his agent functions in relation to Tribal Areas or functions in relation to Defence, External Affairs, or Ecclesiastical Affairs as may be specified by the Governor-General. In discharging these functions, the Governor shall act in his discretion.‡ Such a direction has been recently issued by the Governor-General to the North-West Frontier Province asking the latter to act as the former's agent for the discharge of his functions in respect of Tribal Areas

Administration of Federal Laws.—The Governor-General may, with the consent of the Government of a Province or the Ruler of a Federated State, entrust to them or to their officers, conditionally or unconditionally, functions in respect of matters under the executive authority of the Federation. A Federal Act may confer powers and impose duties upon a Province or its officers and authorities, even in respect of matters regarding which the Provincial Legislature has no power to make laws. A Federal Act which extends to a Federated State may confer powers and impose duties upon the State or its officers or authorities, designated by the Ruler for the purpose. When the above-mentioned powers and duties are performed by a Province or a Federated State or their officers, or authorities, the Federation is to pay to them an agreed sum to cover extra costs of administration that may be incurred by the Province or the State in connection with the exercise of these powers and duties. If an agreement cannot be arrived at, the sum to be paid may be determined by an arbitrator appointed by the Chief Justice of India.§

* Para 219. † Sec. 122. ‡ Sec. 123. § Sec 134.

Agreements may, and if it has been so provided in the Instrument of Accession of the State, shall, be made between the Governor-General and the Ruler of a Federated State for the exercise by the latter or his officers of functions regarding the administration of a Federal law applying to the State. Such an agreement as referred to above shall contain provisions which would enable the Governor-General in his discretion to satisfy himself, by inspection or otherwise, that the law in question is properly administered in accordance with the policy of the Federal Government. If he is not satisfied on that point, the Governor-General, acting in his discretion, may issue such directions to the Ruler as may be necessary. Such an agreement is subject to judicial notice by all courts.* These provisions can in actual effect limit the administrative powers of the Federal Executive in respect of the ceded subjects as far as the States are concerned, if the Rulers make a provision to that effect in the Instrument of Accession. In ordinary cases, the States by ceding certain subjects to the control of the Federation by the Instrument of Accession, cede the legislative as well as the administrative control over them to the Federation. But the provisions above mentioned are intended to provide for having agreements with big States with efficient systems of administration to be allowed to administer certain subjects by agreement with the Federation and in accordance with the policy of the Federation.

It is further provided that the executive authority of a Federated State shall be so exercised as not to impede or prejudice the exercise of the executive authority of the Federation, which is exercisable in the State by virtue of a Federal law applying to it. If, however, the Governor-General thinks that the Ruler of a Federated State has failed to carry out his obligations properly, regarding the executive authority of the Federation in his State, he may at his discretion issue such directions to the Ruler as he thinks fit, after considering any representation made by the Ruler in question. If there is any disagreement as to the exercise of the executive authority of the Federation in a State with respect to any matter, the question may be referred by the Federation or the Ruler to the Federal Court.†

Administr-
tion of
Federal laws
in the
Federated
States

Issuing of
directions

Effect of the
provisions

The proper
exercise of
the executive
authority in
a Federated
State

Duty of the
Ruler of a
Federated
State in
respect of
Federal sub-
jects

* Sec. 125. † Sec. 128

The proper exercise of the executive authority in the Provinces

J.P.C.'s observations

Duty of Provincial Governments to give effect to Federal laws

Power of giving direction

The States

Distinction between legislation in the exclusive and concurrent fields

Regarding the Provinces, it is also provided that their executive authority shall be so exercised as not to impede or prejudice the exercise of the Federal executive authority, which shall extend to the giving of such directions to a Province as may be considered necessary by the Federal Government. Explaining this, the J. P. C. observed :

" The Federal Legislature will have power to enact legislation on Federal subjects which will have the force of law in every Province and, subject to such reservations as may be contained in the Rulers' Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of these laws may be vested in the Federation itself and in Federal officers, subject, in the case of the States, to the terms of the Rulers' Instrument of Accession ; or the Legislature may devolve upon the Provincial Governments or their officers, the duty of executing and administering the law on behalf of the Federal Government. The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority, in so far as it is necessary and applicable for the purpose, as to secure that due effect is given within the Province to every Act of the Federal Legislature which applies to that Province But, in addition to this general statement of a moral obligation, the White Paper proposes to empower the Federal Government to give directions to a Provincial Government for the purpose of securing that due effect is given in the Province to any such law, and that the manner in which the provincial Government's executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government. In the case of the States, it is proposed that the Ruler should accept the same general moral obligation which, as we said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory. But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the Federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself. " *

The J.P.C., however, thought it necessary that some distinction should be drawn between legislation in the exclusive and the concurrent fields. According to it, it was much more doubtful whether the Federal Government should have power as above-mentioned in the concurrent field, because the subjects of legislation in this field will be matters which would predominantly be of Provincial interest, and the agency through which such legislation will be administered will be always exclusively a Provincial agency. But it also thought that in this field there will often be the need for securing uniformity in matters of social legislation, which must be accompanied by reasonable

uniformity of administration. So it suggested that a distinction should be drawn between subjects in the Concurrent List, which relate generally to matters of social and economic legislation, and which relate to matters of law and order, personal rights and status. In respect of the latter kind of subjects, the Federal Government was not to be given any power of administrative control, as there could be no question of Federal directions being issued to the courts, or prosecution authorities in the Provinces. Regarding the other class of concurrent subjects, consisting mainly of the regulation of mines, trade unions, welfare of labour, industrial disputes, infectious diseases, etc., the Federal Government was to have the power of issuing directions for the enforcement of the law, but only to the extent provided by the Federal Act in question.*

Two classes of concurrent subjects

In pursuance of this, it is provided† in the Act that the executive authority of the Federation shall extend to the giving of directions to a Province regarding carrying into execution any Act of the Federal Legislature in respect of subjects contained in Part II of the Concurrent Legislative List. But a Bill or amendment proposing to authorise the giving of any such directions shall not be introduced into or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General to be given in his discretion. The executive authority of the Federation also extends to the giving of directions to a Province regarding the construction and maintenance of the means of communications of military importance, but this does not restrict the power of the Federation to construct and maintain means of communications as part of its functions regarding the naval, military and air force works.

Control of the Federation over the Provinces

Power of giving directions

If, however, the Governor-General thinks that his directions have not been given effect to in any Province, he may in his discretion issue as orders to the Provincial Governor either the directions previously given or after necessary modifications. The Governor-General's Special Responsibility for the peace or tranquillity of the whole or a part of India may require him to issue orders to the Provinces, and it is provided that without prejudice to his power regarding the issuing of orders as mentioned above, he may in his discretion

Issuing of Orders

Special Responsibility for the peace and tranquillity of India

issue orders at any time to a Provincial Governor as to the manner in which the executive authority of the Province is to be exercised for the purpose of preventing any grave menace to the peace or tranquillity of India or any of its parts.

Regarding this the J. P. C. observed :

J. P. C.'s observations

Enforcement of Federal Government's direction

" We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of Federal Ministers ; and, where a conflict of this kind arises between the Federal Government and the Government of a Province any directions by the Governor-General which require the Governor to dissent from, or to over-rule, the Provincial Ministry ought to be given in the Governor-General's discretion. The Governor-General would thus become the arbiter between the Federal and the Provincial Governments, and we think that disputes between the two are far more likely to be settled amicably by the Governor-General's discretionary intervention."*

The Governor-General of India thought fit to exercise his power under this Section in connection with the question of the release of political prisoners in the United Provinces and Bihar. The Congress Governments in these provinces demanded the immediate release of all the political prisoners which the Provincial Governor refused to sanction under orders from the Governor-General under Sec. 126 (5). This resulted in the resignation of the Ministries.

The powers of the Governor-General and the federal Government in respect of the Provinces are further sought to be enlarged by the Government of India Act Amendment Bill which has been introduced in the House of Lords. Under Section 104, the Governor-General can proclaim a state of emergency, and when that is done the Central Legislature can legislate for the Provinces even in respect of Provincial subjects. There is, however, no provision in respect of the executive relations between the Central and the Provincial Governments. The proposed amendment seeks to provide for this in case of an emergency due to war. It is intended to enable the Central Government to extend its executive control over the Provincial Governments, if it is felt necessary. The powers can be usefully exercised by the Central Government at the time of war by taking-over the control of supplies or of lighting in vulnerable parts of India when air raids are feared.

* Para 221.

Acquisition of Land for Federal Purposes.— Provision is made in the Act for the acquisition, by the Federation, of land situate in a Province, if it considers it necessary for any purpose connected with a matter regarding which the Federal Legislature has power to make laws. In such a case, the Federation may require the Province to acquire the land on its behalf and at its expense. If the land belongs to the Province, it may be transferred to the Federation on terms which may be agreed to, or if no agreement can take place, on terms which may be determined by an arbitrator appointed by the Chief Justice of India.*

Procedure

Broadcasting—The important subject of broadcasting has received a special notice in the Act. The Federal Government is not to refuse unreasonably to entrust to a Provincial Government or to the Ruler of a Federated State such functions regarding broadcasting which may be necessary to enable them to construct and use transmitters in the Province or a State, and to regulate and impose fees in respect of construction and the use of transmitters and receiving apparatus in the Province or the State. This, however, does not mean that the Federal Government is required to entrust to any Provincial Government or a Ruler of a State any control over the use of transmitters, constructed or maintained by the Federal Government or by persons authorized by it, or over the use of receiving apparatus by persons so authorised. Further the Federal Government can subject the functions regarding broadcasting entrusted to a Government of a Province or the Ruler of a State to conditions, including conditions with respect to finance, which it may consider necessary; but it is not lawful for the Federal Government to impose any conditions regulating the matter broadcast by, or under the authority of the Provincial Government or the Ruler of a State. All Federal laws with respect to broadcasting have to take note of the foregoing provisions. But if there is any dispute whether the conditions imposed on any Provincial Government or the Ruler of a State are lawful, or any refusal by the Federal Government to entrust to them functions regarding broadcasting is unreasonable, it shall be determined by the Governor-General in his discretion.

Permission
not to be un-
reasonably
refused to
the Provinc-
es in respect
of certain
functions

Disputes

These provisions do not restrict the power of the Governor-General for the prevention of any grave menace to the peace or tranquillity of India or any part thereof, or prohibiting the imposition on Provincial Governments and Rulers of Federated States such conditions regulating matter broadcast as appear to be necessary to enable the Governor-General to discharge his functions to be performed in his discretion or by the exercise of his individual judgment.*

Interference with Water Supplies.—Special provision has been made in the Act regarding the important subject of interference with water supplies by one Province or State so as to prejudice the interest of another Province or State. If any Provincial Government or the Ruler of any Federated State considers that the interests of that Province or State or their inhabitants in the water from any natural source of supply in any Governor's or Chief Commissioner's Province, or a Federated State have been or are likely to be affected prejudicially by any executive action or law or the failure of any authority to exercise any of their power regarding the use, distribution, or control of water from that natural source, that Provincial Government or the Ruler may complain to the Governor-General.† When the Governor-General receives such a complaint, he shall appoint a Commission consisting of persons with necessary qualifications, knowledge, and experience to investigate in the matter of the complaint according to his instructions, unless he thinks that the issues involved in the complaint are not of sufficient importance to necessitate the appointment of such a Commission. Such a Commission, when appointed, shall report, after investigating, to the Governor-General, making the necessary recommendations. If the Governor-General thinks that he requires further explanation or guidance on any point not originally referred to the Commission, he may again refer the matter to the Commission for further investigation. If such a Commission requests the Federal Court for the purpose, the Court in the exercise of its jurisdiction shall issue orders and letters of request for the purposes of the proceedings of the Commission. The Governor-General after considering the report shall issue proper orders regarding the complaint, but

Complaints to be made to the Governor-General

Decision of complaints

Appointment of a Commission

Procedure

*Sec. 129. †Sec. 130.

before he has done that, the Provincial Government or the Ruler of the affected Federated State may request him to refer the matter to His Majesty in Council. When this is done, His Majesty in Council may give such decision and issue order on the matter which he considers proper. Such an order issued by His Majesty in Council or by the Governor-General shall have effect in any affected Province or a State, and any Act of a Provincial Legislature or of a State, repugnant to the order shall be void to the extent of repugnancy. The Governor-General may at any time vary his decision or order given regarding the complaint, if an application is made to him by the affected Provincial Government or the Ruler of the affected State. And if such an application relates to the decision or order of His Majesty in Council and in any other case when the Provincial Government and the Ruler of the State in question requests to the effect, the Governor-General is to refer the matter to His Majesty in Council who may vary the decision or order, if he considers proper to do so. It is also provided that an order made by His Majesty in Council or the Governor-General under the above provisions may contain directions regarding the payment of costs and expenses of the Commission by any Province or State. Such an order relating to expenses or costs may be enforced like an order made by the Federal Court. The above mentioned functions of the Governor-General are to be exercised by him in his discretion.*

Reference
to His
Majesty in
Council

Varying of
orders

Payment of
costs and
expenses
of the
Commission

If the Governor-General thinks that the interests of any Chief Commissioner's Province, or of any of its inhabitants, in the water from any natural source of supply are affected as aforesaid, he may refer the matter to a Commission as in the case of a Governor's Province. The above-mentioned provisions and procedure apply in the case of this Commission as well.† The jurisdiction of the Federal Court does not extend to any action or suit in respect of any matter, if action in respect of that matter might have been taken under the above-mentioned provisions by the Government of a Province, the Ruler of a State or the Governor-General.‡

Interference
with water
supplies of a
Chief Com-
missioner's
Province

Provisions not applicable to a state, if so declared in the Instrument of Accession

J.P.C.'s observations

Necessity of inter-Provincial Consultation

Need for a provision for an Inter-Provincial Council

Procedure for the establishment of an Inter-Provincial Council

These provisions regarding interference with water supply shall not apply in relation to any Federated State, if the Ruler of that State has declared so in his Instrument of Accession.*

Inter Provincial Co-operation.—The J.P.C. observed that though there were no proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, yet there was no reason to suppose that inter-provincial disputes would never arise. It observed :

" There will be necessarily many subjects on which inter-Provincial consultation will be necessary, as indeed has proved to be the case even at the present time ; and we consider that every effort should be made to develop a system of inter-provincial conferences, at which administrative problems, common to adjacent areas as well as points of difference may be discussed and adjusted . . . It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, irrigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work the joint interests of the Provincial Governments in them must be expressed in some regular and recognized machinery of inter-governmental consultation . . . For this reason, we doubt whether it would be desirable to fix the Constitution of an Inter-Provincial Council by statutory provisions in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation. We think further that, although the Constitution Act should not itself prescribe the machinery for this purpose, it should empower His Majesty's Government to give sanction by Order in Council to such co-ordinating machinery as it may have been found desirable to establish, in order that at the appropriate time means may thus be available for placing these matters upon a more formal basis." †

In accordance with these recommendations, the Act provides that if at any time His Majesty thinks, after consideration of representations made to him by the Governor-General, that the public interests would be served by the establishment of an Inter-Provincial Council to discharge the duties of inquiring into and advising upon disputes that may have arisen between the Provinces, investigating and discussing subjects in which the Provinces or the Federation have a common interest, or making recommendations for better co-ordination of policy and action regarding that subject, His Majesty in Council may establish such a Council defining the nature of its duties, organization

* Sec. 134. † Para. 223.

and procedure. An Order establishing such a Council may provide for representatives of the Indian States to take part in the work of the Council.*

In the actual working of the Provincial Autonomy, inter-provincial consultation has been found essential and very useful. A number of Inter-Provincial Conferences have met to consider questions of mutual interest such as industries, agriculture, education and police. Nevertheless no steps have been taken so far to establish any permanent machinery of an Inter-Provincial Council. Perhaps the right occasion for it will arise when the Federation of India comes into being.

CHAPTER XII

THE SYSTEM OF PUBLIC FINANCE IN FEDERAL INDIA

Transfer of Finance to Popular Control ; the Problem of Federal Finance ; the Problem of Federal Finance in India ; The solution ; the Existing System in British India ; the Federal and the Provincial Revenues ; Federal Sources of Revenue ; Provincial Sources of Revenue ; Taxes to be shared or distributed among the Units ; Federal Surcharges ; Corporation Tax ; Taxes in which the Provinces are interested ; Help to Deficit Provinces ; Taxes being levied before the Commencement of the Act ; Allocation of Income-tax between the Centre and the Units ; A General View of Provincial Finance ; the Punjab Finances ; Financial relations between the Crown and the Indian States ; Taxes to which the States are liable ; Remission of the States' Contributions ; Immunities enjoyed by the States ; States' Maritime Customs ; Land Customs Duties imposed by the Indian States ; Proposals in the Act ; Payments from or by the Indian States ; Remissions of States' Contributions ; Cash Contributions ; Privilege or Immunity ; General Remarks ; Miscellaneous Financial Provisions ; Adjustments of Monetary Relations with Burma ; Additional cost of Federation ; Provisions in respect of Borrowing ; Audit and Accounts ; the Auditor-General of India ; the Provincial Auditor-General ; the Auditor of Indian Home Accounts ; Audit of Accounts in respect of the Crown's functions regarding the Indian States ; Provisions in respect of Property ; Provisions in respect of Contracts ; Provisions in respect of Loans and Financial Obligations ; Provisions in respect of Suits and Proceedings ; Contracts in connection with the Crown's Functions in its relations with the Indian States.

Transfer of Finance to Popular Control.—No "Swaraj" is complete without the control over finance. If the purse strings are not in the hands of those who are responsible for the good government of the country, there cannot be any proper discharge of the duties as nothing can be done without adequate supply of money. Herein lies the importance and necessity of the demand for the transfer of control over the federal and provincial finance to the representatives of the people. On the other hand no risk can be taken respecting finance. A mistake may have very serious repercussions and may dislocate the whole system of government. In the case of India, there was, at least from the British point of view, an element of danger involved in the transfer of finance to the inexperienced hands of the Indian Ministers responsible to a popular legislature swayed by sentiments of political and economic nationalism and conscious of the pressing elementary economic needs of the poverty-stricken millions of the country. An incautious act might upset the whole apple-cart of the new Constitution so

Danger involved in the transfer of finance

Need for Caution

laboriously built. Moreover the need for preserving the financial credit of India in the markets of the world, and particularly in the city of London, was imperative. The Home Charges, the Public Debt of India, the pensions, etc., the unpopular huge military expenditure, and certain other interests had to be protected in order to inspire confidence in Britain and to secure the safe passage of the Act. All this was clear enough. Thus complete control over finance could not be conceded. If at all finance was to be a transferred subject, there must be adequate and effective safeguards.

In the words of the Secretary of State for India :

"The safeguards to be provided must ensure the maintenance of financial stability and credit and this, in its turn, depends upon provisions in a new budget to control the balance, that the sinking fund arrangements are adequate, that capital and revenue expenditure are allotted on sound lines, that excessive borrowing or borrowing for revenue purposes is not undertaken, and that a prudent monetary policy is consistently pursued."*

The need
for Safe-
guards

On the other hand, the Indian demand may be stated in the words of Sir Purushottamdas Thakurdass as follows :

" We say the finances of India should be managed by a Minister responsible to the Indian Legislative Assembly and responsible in the most complete manner. Safeguards we are prepared to accept whenever they are proved to be in the interests of India, any safeguard regarding finance other than this cannot be conceived by us to be justified . . . Any future reforms will be useless if finance is not completely transferred to us to be managed by us and by a Minister responsible to the representatives of the people in India."*

Indian
demand

As a matter of fact, it was realized by all that during the period of transition there must be safeguards, but they must be in the interests of India, and not of British imperialism. But the scheme of public finance in the new Constitution is full of safeguards, such as the Special Responsibility of the Governor-General for the financial credit of India, the appointment of the Financial Adviser by him, the charging of a huge amount of some essential expenditure on the revenues of the Federation and the Provinces and keeping it beyond the vote of the popular Legislatures, the powers of the Governor-General and the Governors in respect of Budgets, protection of the salaries and pensions of the civil servants, creation of the Reserve Bank of India, and the proposed establishment of an independent Federal Railway Authority. All these safeguards are not apparently in the interests of

Safeguard.
in the in-
terests of
India

* Statements before the Federal Structure Committee.

India. Consequently they are looked upon with suspicion and distrust, and cause discontent. Perhaps the whole thing has been overdone so as to cause serious inconvenience to the future Federal Ministry so much so that some people think that the position under the new scheme would be much worse than under the Montford Reforms. It is not proposed here to go into that aspect of the question or to examine the system of public finance in Federal India from the political point of view. The question will be examined, as far as possible, only in its constitutional aspect.

Complex System of Federal Finance in India

The Problem of Federal Finance.—There is no denying the fact that finance always presents a very difficult problem in all Federations. The problem is all the more difficult under the very complex Indian federal scheme. The solution that has been attempted with the idea of satisfying all the needs is by no means simple, and cannot satisfy everybody. The general problem in a Federation is to reconcile the interests of the units with those of the Federal centre. In its economic aspect, the problem may be stated to be to concede adequate and independent sources of supply to the units while keeping the financial position of the centre sound. Both the units and the centre must get enough money to discharge their economic and political functions properly.

"A well-balanced tax-system for a federation demands a combination of these different principles—adequacy and elasticity to secure autonomy, and efficiency and suitability to secure administrative economy."

According to Sir Walter Layton :

"The problem of financial relations between the central and provincial authorities in any country is ideally solved where the sources of revenue which, from the administrative point of view, fall naturally within the sphere of the provincial governments, harmonize as far as their yield and elasticity is concerned with the functions which are assigned to these governments, while those which are naturally central sources accord with the functions of the central government."^{*}

Sir Walter Layton's view

Allocation of sources of revenue to the units and the Federal centre according to their needs

Thus the problem in its simplified form is the allocation of sources of revenue to the units and the Federal centre according to their needs, and the ideal solution suggested is that these sources of revenue should fall from the administrative point of view within the respective spheres of the units and the centre.

* Statutory Commission Report, Vol. II, p. 210.

But many difficulties arise, when it comes to the practical application of this solution. In the first place the sources of revenue falling within the administrative spheres of the units and the centre may or may not be adequate for their needs. Again, certain taxes can be collected more conveniently by the centre though they fall within the administrative spheres of the units. Further, certain taxes, such as income-tax and corporation tax, must be under the control of the Federal centre in the interests of uniformity as well as general commercial and industrial progress of the country taken as a whole. Thus there cannot be strict adherence to one set and prescribed solution, which must be adapted and varied according to individual needs.

Another point that should be remembered about the federal finance is that there should be "an equitable distribution of burdens and benefits among the various federating units." In translating this general principle into practice, various difficulties present themselves as it is very difficult to ascertain burdens and benefits and then to have its distribution on equitable basis. Moreover this must be done in consonance with general national progress. It has been said that—

"In a well-organized federation, it is indeed the duty of the federal government to apply the common resources in such a manner that the welfare of the nation as a whole is maximised; this is to be done by making real transfers from the richer to the poorer units by taxation designed to fall more heavily on the former and by subsidies and subventions benefitting the latter."*

Thus in the very nature of things, in a scheme of federal finance there is a need of concurrent jurisdiction in respect of certain taxes, and the use of balancing factors in the interests of equity and uniformity. The rigid distribution of sources of supply between the units and the centre which must take place in all federal schemes of government, is bound to result in certain inequalities. In order to correct them, resort is to be had to the distribution of the proceeds of certain taxes, levy of Federal and Provincial surcharges, payment of subsidies and subvention from Federal funds, and the contributions by the units.

The J. P. C. also realized this difficulty. It observed in its Report:

Difficulties in its practical application

No strict adherence to one set and prescribed solution

Equitable distribution of burdens and benefit among the units

Welfare of the nation as a whole

Concurrent jurisdiction and balancing factors

* Adakar: The Principles and Problems of Federal Finance, page 183.

P. C.'s
views on the
problem of
federal
finance

"In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Unit), each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities, but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system."*

Need for a
realistic sol-
tion

The Problem of Federal Finance in India.—The problem of federal finance in India is very complex and presents many difficulties. In view of these no ideal or theoretical solution can fit in. Instead a very realistic solution, though full of shortcomings, must be found out. One aspect of the problem, in the words of Mr. Pethick-Lawrence, is

"an unbridgeable chasm between two conflicting loyalties, the loyalty of India to her idea of self-government and the loyalty of the British administration to its conception of trust."

Bringing
together the
two points of
view

While India demands complete control, the British Parliament does not want to give up its trusteeship, whatever that might mean. If there is not to be a deadlock, there must be mutual give and take. It must be realized that it is in the interest of India that she commands credit and inspires confidence in her financial position in foreign countries, while Britain must understand that confidence in the financial strength of India must be based not on any artificial foreign aid or control but on "the internal strength and integrity of Indian opinion." Approach from these points of view will bring the two apparently conflicting interests to meet at a common point. This common point should mean the recognition of the need of safeguards in the clear interests of India during the period of transition, and that these should be internal and not imposed from outside, being based on public opinion.

Safeguards
in the in-
terest of
India

Allocation of
separate
sources of
revenue be-
tween the
units and the
centre

From the other point of view the problem presents itself in the form of the distribution or allocation of the sources of revenue between the Federal centre and the units with the idea of enabling them to discharge their functions properly and adequately. In other words, in India the Provinces must be provided with adequate funds but the Centre must not be weakened.

* Para 244.

In the case of this country, the problem is further complicated by the accession of the States which for the purposes of the entry to the Federation are to be regarded as independent entities. They do not seem to be very anxious to give up their present theoretically sovereign status and to join the Federation at some financial cost to themselves. The scheme of Federation, therefore, must contain provisions in the shape, more or less, of allurement which should make it worthwhile for them to join the Federation.

Money must also be found to foot the bill in connection with the inauguration of the whole scheme of the Federation including that of Provincial Autonomy.

The Solution.—An attempt has been made in the new Government of India Act to satisfy all these needs. Ample safeguards have been provided with the declared object of safeguarding the financial credit and stability of the country as a whole as well as of the Provinces. Separate sources of revenue have been allocated between the Provinces and the Federation. Special and pressing economic needs of the Provinces are sought to be met by adopting certain balancing devices. Lastly, provision is made to compensate the States for joining the Federation. All this has made the whole scheme rather complex.

The Existing System in British India.—It is not proposed here to give the full story of decentralization of finance in British India. Suffice it to say that from 1870 the British Government began to move towards it so that the 1919 reforms practically adopted a federal system of finance. The authors of the Montford Report stated :

" We have to demolish the existing structure at least in part before we can build anew. Our business is one of devolution, or drawing a line of demarcation and cutting long-standing ties. The Government are to give and the Provinces must receive ; for only so can the growing organism of self-government draw air into its lungs and live." At another place, they remarked : " Our first aim has been to find some means of entirely separating the resources of the Central and Provincial Governments... The existing financial relations between the Central and Provincial Governments must be changed if the popular principle of government is to have fair play in the Provinces."

This was done by the devolution rules which resulted in almost completely rigid separation of the sources of revenue assigned respectively to the Centre and the Provinces. In the words of the J. P. C. :

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the States
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matters

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scheme

The Evi
tion of t
Federal
system
finance

Devoluti
Rules

" From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress."*

The J. P. C. arrived at two conclusions—

" (a) that there are few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure ; and (b) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in economic conditions. This has led to a very strong claim by the Provinces for a substantial share in the taxes on income. This claim, as might be expected, has been pressed most vigorously by the more industrialized Provinces like Bombay and Bengal." †

The Committee also discussed the effect of the entry of the States into the Federation and observed :

" The entry of the States into the Federation removes, indeed, one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike ; but the States have no say under the present system in the fixing of the tariff With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears " †

All these problems and needs have been kept in view while providing a system of public finance for Federal India. Various enquiries were held by expert committees for the purpose. Sir Walter Layton examined the whole question and submitted his report to the Indian Statutory Commission. The First Peel Committee, the Percy Committee, the Davidson Committee, and the Second Peel Committee also examined the problem. The Government gave their proposals in the White Paper. The Joint Parliamentary Committee examined them and made their recommendations which have been embodied in the Act. The Act outlines merely a bare scheme and the details have been filled in as a result of the recommendations of Sir Otto Niemeyer.

* Para 245 † Para. 246. ‡ Para. 247.

The Federal and the Provincial Revenues.—According to the Act, the revenues of the Federation include all revenues and public moneys raised or received by the Federation, notwithstanding certain taxes which are levied and collected by it, though the proceeds are to be paid over to the Provinces in the prescribed manner. And the revenues of a Province include all revenues and public moneys raised or received by a Province. *

Definiti

Federal Sources of Revenue.—Sources of revenue have been demarcated and allocated separately to the Federation and the Provinces. The Federal sources of revenue include customs duties, including export duties, excise duties on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, Indian hemp and narcotics and narcotic drugs, non-arcotic drugs and medicinal and toilet preparations containing alcohol, the corporation tax, salt, state lotteries, taxes on income other than agricultural income, taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of the companies, duties on succession to property other than agricultural land, stamp duties on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, proxies and receipts; terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights, receipts from fees in respect of matters in the Federal List, profits from coinage and currency, escheat and lapse in areas administered by the Federal Government, contribution by the States, tributes and other payment, and profits from commercial undertakings such as the Posts and Telegraphs, Federal Railways, and Banking, etc.

Separat
Sources

These sources may be conveniently classified as under :—

Classifi

(a) *Taxes levied, collected, and to be wholly retained by the Federation* :—

Customs, Corporation Tax; Taxes on capital values of assets of individuals and companies, miscellaneous receipts from fees in respect of matters in the Federal List; Surcharges on Income-Tax,

" From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress."*

The J. P. C. arrived at two conclusions—

" (a) that there are few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure ; and (b) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share of those heads which respond most readily to an improvement in economic conditions. This has led to a very strong claim by the Provinces for a substantial share in the taxes on income. This claim, as might be expected, has been pressed most vigorously by the more industrialized Provinces like Bombay and Bengal." †

The Committee also discussed the effect of the entry of the States into the Federation and observed :

" The entry of the States into the Federation removes, indeed, one very serious problem. The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike ; but the States have no say under the present system in the fixing of the tariff With their entry into the Federation the States will take part in the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears " †

All these problems and needs have been kept in view while providing a system of public finance for Federal India. Various enquiries were held by expert committees for the purpose. Sir Walter Layton examined the whole question and submitted his report to the Indian Statutory Commission. The First Peel Committee, the Percy Committee, the Davidson Committee, and the Second Peel Committee also examined the problem. The Government gave their proposals in the White Paper. The Joint Parliamentary Committee examined them and made their recommendations which have been embodied in the Act. The Act outlines merely a bare scheme and the details have been filled in as a result of the recommendations of Sir Otto Niemeyer.

* Para 245 † Para. 246. † Para. 247.

The Federal and the Provincial Revenues.—According to the Act, the revenues of the Federation include all revenues and public moneys raised or received by the Federation, notwithstanding certain taxes which are levied and collected by it, though the proceeds are to be paid over to the Provinces in the prescribed manner. And the revenues of a Province include all revenues and public moneys raised or received by a Province. *

Definitic

Federal Sources of Revenue.—Sources of revenue have been demarcated and allocated separately to the Federation and the Provinces. The Federal sources of revenue include customs duties, including export duties, excise duties on tobacco and other goods manufactured or produced in India, except alcoholic liquors for human consumption, opium, Indian hemp and narcotics and narcotic drugs, non-arcotic drugs and medicinal and toilet preparations containing alcohol, the corporation tax, salt, state lotteries, taxes on income other than agricultural income, taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on the capital of the companies, duties on succession to property other than agricultural land, stamp duties on bills of exchange, cheques, promissory notes, bills of lading, letters of credit, insurance policies, proxies and receipts; terminal taxes on goods or passengers carried by railway or air; taxes on railway fares and freights, receipts from fees in respect of matters in the Federal List, profits from coinage and currency, escheat and lapse in areas administered by the Federal Government, contribution by the States, tributes and other payment, and profits from commercial undertakings such as the Posts and Telegraphs, Federal Railways, and Banking, etc.

Separat
Sources

These sources may be conveniently classified as under :—

Classifi

(a) *Taxes levied, collected, and to be wholly retained by the Federation* :—

Customs, Corporation Tax; Taxes on capital values of assets of individuals and companies, miscellaneous receipts from fees in respect of matters in the Federal List; Surcharges on Income-Tax,

* Sec. 136.

" From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, while the demands upon the Centre except in time of war or acute frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for maintaining unimpaired both the efficiency of the defence services and the credit of India as a whole, Centre and Provinces together. But the resources of the Centre comprise those which should prove most capable of expansion in a period of normal progress."*

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Income-tax

Besides the Provinces are to receive a part of the Income-tax. It is provided in the Act* that taxes on income other than agricultural income, are to be levied and collected by the Federation. A prescribed percentage of the net proceeds of the tax, except that part of the proceeds which are attributable to Chief Commissioners' Provinces or to taxes payable in respect of Federal emoluments, is to be assigned and distributed in the prescribed manner among the Provinces and those Federated States where the tax is leviable. The percentage that is prescribed originally cannot be increased by any subsequent Order in Council. The Federation, however, may retain out of the money assigned to the Provinces and States a prescribed sum in each year of a prescribed period, and in each year of a further prescribed period,† a sum less than that retained in the preceding year by an amount, being the same amount in each year, so calculated that the sum to be retained in the last year of the period will be equal to the amount of each such annual reduction. The prescribed periods in this case cannot be reduced subsequently. And the Governor-General in his discretion may in any year of the second prescribed period direct that the sum to be retained by the Federation in that year shall be the sum retained in the preceding year and that the second prescribed period shall be correspondingly extended. This direction, however, should not be given by the Governor-General without consulting such representatives of Federal, Provincial, and State interests as he may think desirable. Moreover before doing so, he must be satisfied that such an action is necessary for the maintenance of the financial stability of the Federal Government.

Duties on
Salt, Excise
duties and
Export
duties

Duties on salt, Federal excise duties, and export‡ duties are to be levied and collected by the Federation. If it is so provided by a Federal Act, a part or whole of the proceeds from any of these duties may be distributed in accordance with the principles formulated by the Constitution Act among the Provinces and the Federated States to which the Act imposing the duty applies. This has been done to lend an element of elasticity to the finances of the Provinces. It is, however, expressly laid down that one-half, or such greater proportion as His Majesty in Council may determine, of the net proceeds in each year of any

* Sec. 138. † Sec. 138 (2). ‡ Sec. 140.

THE SYSTEM OF PUBLIC FINANCE IN FEDERAL INDIA

export duty on jute or jute products must be assigned and distributed among the Provinces or the Federated States in which jute is grown in proportion to the respective amounts of jute grown therein. This has been done in particular to give a much needed relief to the jute-producing Province of Bengal which suffered severely under the older plan of allocation. The question was examined by Sir Otto Neimeyer who recommended that the share of the jute-producing Provinces in the Jute-Duty should be increased to $62\frac{1}{2}$ per cent of the gross yield of the Duty. "This increase of $12\frac{1}{2}$ per cent would mean in round figures the following additions to the resources of the provinces concerned at a corresponding cost to the Central Government: Bengal, 42 lakhs; Bihar, $2\frac{1}{2}$ lakhs; Assam, $2\frac{1}{4}$ lakhs; and Orissa rather over "a quarter lakh."

The Export duty on Jute

Federal Surcharges.—The Federal Legislature is empowered to levy a surcharge on the usual rate of Income-tax for the purposes of the Federation. The units cannot share this, the whole proceeds forming part of the Federal revenues. But the Act levying such a surcharge is to provide for the payment by each Federated State where Federal Income-tax cannot be levied, of an equivalent contribution of the estimated net proceeds from the surcharge if it were leviable in that State. That sum must be paid by the State concerned.* The Federal Legislature may also levy a surcharge for Federal purposes only in respect of succession duties, stamp duties, terminal taxes and taxes on fares and freights. It is, however, intended that these surcharges shall be levied only in emergency cases. It is, therefore, laid down that a Bill or amendment imposing any such Federal surcharge cannot be introduced in the Federal Legislature without the previous sanction of the Governor-General in his discretion. The latter is not to give this sanction unless he is satisfied that all practical economies and all practical measures for otherwise increasing the proceeds of the Federal taxation or their portion which can be retained by the Federation, cannot balance the Federal receipts and expenditure on revenue account in that year.

Distribution among the Provinces

On Income-tax

Leviable in Indian States

Other Federal Surcharges

only for emergency purposes

Previous sanction of the Governor General

Levy in a Federated State

Corporation Tax.—It is expressly provided in the Act that Corporation tax cannot be levied by the Federation in any Federated State until after ten years after the establishment of the Federation. When such a tax is levied, choice must be given to the

Ruler of any Federated State, where the tax is leviable, to make payment of an equivalent contribution to the estimated net proceeds from the tax if it were levied in the State. In such a case, no information or returns can be called from any corporation in the State by the Federal officers, but the Ruler of the State is duty bound to cause to be supplied to the Auditor-General of India such information as he may reasonably require to determine the amount of the contribution. If the Ruler is not satisfied with the amount so determined, he may appeal to the Federal Court. The latter may reduce the amount, if it is satisfied that the amount determined is excessive. The decision of the Court on the point is final.*

Appeal to the Federal Court

The Corporation tax is a supertax on the profits of companies. In connection with it, the J.P.C. observed :

J. P. C's Recommendation

"It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution."†

It was also pointed out in the Parliamentary Debates that :

Parliamentary Debates

"The States always made it plain that they would preserve to themselves the right not to withhold contributions but to decide whether contributions should be derived from direct taxation as in the case of Mysore, or whether equivalent payment should be made out of the revenues of the State to that which would be leviable if it were raised by the Corporation Tax."

Taxes in which the Provinces are interested.—It will be noticed that the Federal taxes are not merely the concern of the Federation as the Provinces share the proceeds of certain Federal taxes such as Income-tax, Jute Export Duty, Salt Duty, Excise Duty on tobacco. Duties on Exports, Succession Duties Stamp duties on bills of exchange, Terminal taxes on goods or passengers carried by railway or air, Tax on railway fares and freights etc. The J.P.C. observed

"This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection ; but we see no escape from it."‡

Blurring of responsibility

It was, therefore, suggested that changes in such taxes should take place after the consultation of the units. This suggestion has not been adopted in the Act, but it is provided that no Bill or amendment

* Sec. 39. † J. P. C. Para. 256. ‡ J. P. C. Para. 262. ‡ Sec. 14

which imposes or varies any tax or duty in which the Provinces are interested, or which varies the meaning of the expression "agricultural income," or which affects the principles on which moneys are or may be distributed to the Provinces or the States, or which imposes any Federal surcharges, can be introduced or moved in the Federal Legislature except with the previous sanction of the Governor-General in his discretion. This sanction is not to be given unless the Governor-General is satisfied that all practicable economies and all practicable measures for otherwise increasing the proceeds of Federal taxation or their Federal share would not balance Federal receipts and expenditure on revenue account in that year.

Help to the Provinces.—Under the scheme of the Act, certain Provinces are unable to meet their normal expenditure. It was necessary to render them financial help from outside if they were to start on an even keel. Sir Otto Niemeier proposed to render assistance to the Provinces in three ways, in the form of cash subventions, cancellation of the net debt incurred prior to 1st April, 1936, and distribution of a further 12½ per cent of the Jute Duty. Certain deficit Provinces had to be given subventions from Federal revenues. The Percy Committee brought the case of such deficit Provinces to the notice of His Majesty's Government. The Second Peel Committee more or less accepted these recommendations, and specially pointed out the case of Sind, Orissa, and Assam. The J. P. C. accepted the White Paper proposals on the point, and observed :

" The problem of Sind differs from that of the others, since it is not expected that this Province, will permanently remain a deficit area. Other Provinces notably Orissa and Assam are, so far as can be foreseen, areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of resources, present or proposed ; and in these cases it is intended that there shall be a fixed subvention from the Federal revenues. Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable contribution and thus to avoid the danger that the Province, instead of developing its resources, may be tempted to rely on expectations of extended Federal assistance ; and we agree... The case of the North-West Frontier Province stands on a different footing. This Province is at present in receipt of a contribution of a crore of rupees annually from the Centre, the need for which arises mainly from special expenditure in the Province due to strategic considerations, though not strictly to be classified as defence expenditure. In this case it seems essential that there should be power to review the amount from time to time though here also too frequent changes would be open to the objection to which we have referred above."*

Previous sanction of the Governor-General

Sir Otto's proposals

J. P. C.'s observation

Sind

Orissa and Assam

North-West Frontier Province

Provision in
the Act

The actual provision in the Act is to the effect that such Provinces as His Majesty may determine to be in need of assistance may receive certain prescribed sums as grants in aid in each year. Different sums may be prescribed for different Provinces. These sums shall be charged on the revenues of the Federation. No grant fixed under this provision can be increased by a subsequent Order in Council unless an address has been presented to the Governor-General by both Chambers of the Federal Legislature for submission to His Majesty praying that the increase may be made. This, however, does not apply to the North-West Frontier Province.*

The Amount
of grants in
aid

The Federal contribution (in rupees) to the Provinces as fixed by the Order in Council† under this section is as under :—

North-West Frontier Province	...100 lakhs a year.
Orissa	...47 lakhs per year up to 1942.
	43 lakhs per year in the years 1942-46.
	40 lakhs per year subsequently.
Assam	.. 30 lakhs per year.
United Provinces	...25 lakhs a year up to 1942 only.
Sind	...gets aid for 5 years. 110 lakhs in the year 1937-38. 105 lakhs a year in the years 1938- 39 to 1947-48. 80 lakhs a year in the years 1948-49 to 1968-69. 65 lakhs a year in the years 1969- 70 to 1974-75. 60 lakhs per year in the years 1975-76 to 1981. 55 lakhs per year in the years 1982 to 1986-87.

* Sec. 142. † The Government of India (Distribution

Sir Otto proposed cancellation of the entire debt of Bengal, Bihar, Assam the North-West Frontier Province, and Orissa, and all pre- 1936 deficit debt plus approximately two crores of pre- 1921 debt of the United Provinces. The total annual relief to the Provinces, which he aimed at giving was as under:

Bengal 75 lakhs; Bihar 25 lakhs; Central Provinces and Berar 15 lakhs; Assam 45 lakhs; North-West Frontier Province 110 lakhs, Orissa 50 lakhs, Sind 105 lakhs; United Provinces 25 lakhs.

The extra recurrent cost to the Federal Centre was estimated to be 192 lakhs. Further a non-recurrent grant of 19 lakhs and 5 lakhs were recommended for Orissa and Sind respectively.

Taxes being levied before the commencement of the Act.—It is expressly provided that any taxes, duties, cesses, fees which were being lawfully levied before April 1, 1937, under a law in force on January 1, 1935, by any Provincial Government, municipality or other local authority for their purposes may continue to be levied and applied to the same purpose until otherwise provided for by the Federal Legislature even though these taxes, etc., might have been mentioned in the Federal Legislative List.*

Allocation of Income-tax between the Centre and the Units.—The allocation of Income-tax between the Centre and the units presented a difficult problem. The proposed entry of the States in the Federal scheme of government added to the complexity of the problem. In the words of the J.P.C.

"If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to require that the subjects of the federating States should also pay income-tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind."†

On the other hand, the Provinces put forward a demand for more funds and particularly the refund of the proceeds from Income-tax levied in their territory. This demand had to be seriously considered in order to put the Provinces on an even keel; but at the same time the position of the Centre could not be unduly weakened.

"In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being made up for the time being by contributions from the Provinces, which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear, as new Federal resources were developed."‡

Conciliation of Debts'

Relief to the Provinces

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Complexity of the Problem

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Various Proposals

* Sec. 143 (2). † Paras. 247. ‡ J.P.C. Para. 248.

The Federal Finance Committee, however, saw no prospect for the abolition of such Provincial contributions within any period that could be foreseen. On the other hand, the Centre could not be expected to do without the Income-tax proceeds, particularly in view of the additional cost involved in the enforcement of the Act.

The White Paper proposed that—

The White Paper's Proposal

"Taxes on income derived from federal sources, i.e., federal areas or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent, nor more than 75 per cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances made it necessary to do so."*

In addition to this the Federal Government and the Legislature could levy a surcharge for Federal purposes.

J.P. C.'s Recom-
mendations

The J. P. C. was critical of this proposal and expressed the opinion that there was little or no prospect of the possibility of fixing a higher percentage than 50 per cent and that there was an obvious difficulty in prescribing in advance a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend the process. So they thought it preferable to leave the actual periods to be determined by Order in Council in the light of circumstances at the time rather than to fix them by Statute.†

Niemeyer's Enquiry

These suggestions were accepted and embodied in the Act. After the Act was passed, Sir Otto Niemeyer was appointed to conduct an enquiry in the problem of Federal finance, and also to suggest specifically the percentage on the basis of which the proceeds from Income-tax should be allocated between the Centre and the Provinces, to determine the basis of distribution of Income-tax among different Provinces, and to fix the duration of each of the two periods into which the initial and permanent assignment of the Income-tax to the Provinces could be divided. Sir Otto recommended :—

* J.P.C. Para. 250 ; White Paper, Proposals 139, 141. † Para. 252.

"By six equal steps, beginning from the sixth year from the introduction of provincial autonomy, but subject to the proviso to Sec. 138 (2) of the Act, the Centre is to distribute income-tax to the provinces so that finally 50 per cent of the distributable total has been relinquished in the intermediate five years. There is no possible relinquishment of the income-tax so long as the portion of the distributable sum remaining with the Centre together with any contribution from railways aggregates to less than 10 crores."

The percentage division of the distributable portion of the Income-tax between the Provinces is as follows : Madras, 15; Bombay, 20; Bengal, 20; U.P., 15; the Punjab, 8; Bihar, 10; C. P., 5; Assam, 2; N. W. F. P., 1; Orissa, 2; and Sind, 2.

Sir Otto Niemeyer states that :

"Substantial justice will be done by fixing the scale of distribution partly on residence and partly on population, paying to neither factor a rigidly pedantic deference for which the actual data provides insufficient justification."

These recommendations were accepted and were embodied in the Government of India (Distribution of Revenues) Order in Council 1936. The first of the periods* to be prescribed by His Majesty in respect of the retention of Income-tax proceeds by the Federation is fixed by this Order to be five years. The latter also lays down that the sum to be retained by the Federation under the above-mentioned provision can in each of these prescribed years be either the whole of the moneys assigned to the Provinces or the States, or such a part of that which will along with the Federal share of Income-tax for the year and contribution by the Railways to the funds of the Central Government amount to thirteen crores of rupees, whichever is less†. In other words the Centre is to distribute the Income-tax proceeds to the Provinces in such a way that finally 50 per cent of the total distributable proceeds are made available for distribution in the prescribed period of five years provided that the portion of the distributable proceeds remaining with the Centre along with any contribution from the Railways aggregates Rs. 13 crores.

A General View of Provincial Finance.—To sum up, it may be stated that separate sources of revenue have been allotted to the Provinces. But, although the list of Provincial sources looks imposing, yet it does not bring sufficient revenues to the Provinces to meet their pressing needs. Generally speaking, all the progressive or elastic and productive sources of revenue are assigned to the Federal Government, and

Niemeyer's
Recommen-
dations

Allocation
among the
Provinces

Basis of dis-
tribution

The Order
in Council

Separate
Sources of
Revenue

* Required by Sec. 138 (2). † The Government of India Distribution of Revenues) Order, 1936, 6 (1, a and b).

**Help from
Federal
Revenues**

comparatively inelastic and burdensome sources are assigned to the Provinces. Further some of the Provincial items are to be utilized by the local bodies like the Municipalities and the District Boards. This is at a time when the Provinces are expected to give some relief to the poor and overtaxed peasantry, and to spend large sums of money on nation-building activities. The Provinces, under the circumstances, cannot go on an even keel left to themselves. They have, therefore, to secure some relief from the Federation. One-half of the net proceeds from Income-tax, other than Corporation tax and tax on Federal incomes, is to be distributed among the Provinces in a prescribed manner in accordance with the principles laid down by Sir Otto Niemeyer. Sixty-two and a half per cent of the proceeds from the export duty on jute is divided among the jute producing Provinces of Bengal, Orissa, and Assam. The deficit Provinces of Sind, Orissa, North-West Frontier Province, United Provinces, and Assam receive subventions. Under the scheme, Bombay has received an annual relief to the extent of approximately 90 lakhs from the separation of Sind, while Madras and Bihar have received annual relief to the extent of approximately 20 lakhs and 8 lakhs respectively from the separation of Orissa. Moreover it is further provided that if the Federal Legislature so provides by an Act, proceeds from Salt Excise, and Export Duties may be distributed among the Provinces. This is, however, a remote possibility in view of the not very affluent finances of the Federal Government.

**Division of
the Export
Duty on Jute**

Subventions

**Relief to
certain
Provinces**

**Distribution
of certain
Taxes**

**The Present
Position**

**Balanced
Budgets**

By these means funds have been found for the Provinces. The popular Provincial Governments are confronted with huge problems and are expected to undertake on a huge scale the nation-building work including rural uplift, educational progress, etc., to fight growing unemployment, and to raise generally the financial condition of the masses. All this requires great outlay of expenditure. But the Provinces cannot afford that so much so that at one time it was feared that the frail bark of Provincial Autonomy might founder on the rock of finance. Fortunately the brief working of the Autonomy in the Provinces has falsified the fears, and most of the Provincial Governments have been able, generally speaking, to balance the budget or at least to pull on without extensive borrowing. Yet it is clear that they are finding it very difficult

to satisfy the manifold demands on their resources with the result that all the important social services and nation-building departments are not being attended to the extent they should, what to say of giving much needed relief to the poverty stricken peasantry. The position was very correctly described by Hon'ble Mr. Manohar Lal, the Finance Minister of the Punjab, in his Budget speech before the Punjab Legislative Assembly last year. He stated : "Sir, Provincial Governments in India do not enjoy much elbow room because of the narrow range of finance rigidly confined within the strictest bounds. All provincial activity has to be carried on checked at every stage by this constraining factor. Even moderate projects to push forward along essential lines of progress have to be disountenanced. Increased liability for securing expenditure can be assumed only with a degree of caution that must damp the spirit of any reformer : no bold and large scale improvements, however urgent, and matters of necessity, can be entertained. Finance the helpmate of administration, operates as a discouraging mistress, for the dictates of finance cannot be ignored with impunity. The main sources of our revenue, the chief claims for expenditure are largely fixed and invariable".

Hon'ble Mr.
Manohar
Lal's
remarks

Under the circumstances, the Provincial Governments are practically hunting for new sources of revenue. Some of them have tried to save a little by retrenchment, but here there is not much scope because the Services with their high emoluments, and particularly the all India Services, are strongly protected under the Act and cannot be easily touched. In this respect the Congress Ministers have set a very noble example by agreeing to work on paltry salaries of five hundred rupees a month each, with certain small allowances. The Congress Governments generally speaking, are also paying smaller salaries and allowances to the members of the Legislatures. These economies, however, cannot solve the huge problem though they make a small saving. Greater attention is, therefore, being paid to find out new sources of revenue. The Government of Central Provinces and Berar proposed to levy a tax on the sale of petrol and lubricants in the Province. The Central Government considered it as an encroachment on its field of revenue because the proposed tax was a sort of excise which was a Federal subject. The case was taken to the Federal Court which gave its decision in favour of the Provincial Government. The decision has been welcomed by the Provincial Governments because it has given them a new source of revenue. They have not been slow in using the hint as many of them, including the Government of the Punjab, have

Hunt for the
new Sources
of Revenue

Petrol tax

Fines in
Cantonment
Areas

decided to follow in the footsteps of the Central Provinces and Berar in the matter of taxing the sale of motor spirits and lubricants. The Government of the United Provinces in its hunt for new sources of income claimed that the fines imposed and collected in the cantonment areas should be credited to the Provincial revenues with retrospective effect since 1924 as certain provisions of the Cantonment Act, 1924, were *ultra vires* of the then Indian Legislature. The Federal Court which heard this case, dismissed the case of the United Provinces' Government, but the Chief Justice of India remarked :

" The practical effect of the transitory provisions order was to postpone for two years the coming into effect of so much of the Adaptation Order as relates to Section 106 of the Act of 1929, that is, until April 1 of the current year. On and after that date, unless the Adaptation Order is amended, the fines will no longer be credited to the cantonment funds, but will be credited to the revenues of the province."

Thus as matters stand the Provincial Governments may claim these fees and fines after April 1, 1939.

Employ-
ment Tax

The Government of the United Provinces also proposes to levy, what has been called, an Employment Tax in a graded scale on persons who receive salaries. Legal opinion is divided on the point, and some consider this tax to be illegal as it is another form of Income-tax which is a Central subject, and in actual effect it means a cut in the salaries of public servants and others. Lastly, taxes on dog racing, on crosswords, and on the sale of commodities have been proposed in certain other Provinces like Bombay, Bengal, and Madras. Thus Provincial Autonomy has meant increased taxation which is absolutely essential for financing beneficent schemes.

Sales Tax

The Punjab Finances.—A few words may be said here about the financial position of our Province, *viz.*, the Punjab. As far as the finances are concerned, the Punjab is a happy Province enjoying a very sound budgetary position in spite of the increased expenditure on Beneficent Departments. The Hon'ble Mr. Manohar Lal, an economist of repute, is the custodian of our finances. In his Budget speech last year (1938-39), he stated before the Punjab Assembly :

Happy
Budgetry
position

" It has been repeatedly asserted by the highest authorities that finance " has a way of taking terrible revenge upon nations

and individuals who neglect or despise it." I have taken care, in obedience to this salutary warning, that all possible attention and respect is shown to the minutest requirements of exigent finance that there be no occasion for our being visited with any of finance's dire revenges or punishments."

That this was no idle boast is proved by the present state of finance of the Province. Partly due to the wise handling by the Finance Minister and partly due to the strong position under which the Provincial Autonomy commenced in this Province, the Government could boast of a huge surplus last year.

A huge Surplus

It was partly on account of this strong financial position that the Punjab was not very generously treated by Sir Otto Niemeyer. The latter recommended the share of the Punjab from the proceeds of the Central Income-tax to be only 8%, as compared with 15% to Madras, 20% to Bombay, 20% to Bengal, and 15% to the United Provinces. The Government of the Punjab protested against this and pointed out in their note that it felt that the Province would have a permanent sense of injustice and that at least their Income-tax share should be fixed on the population percentage. The Secretary of State, however, accepted the Niemeyer Report. He observed in respect of the Punjab :

Share of the
punjab in
the Income-
tax proceeds

"While I sympathize with much that the Punjab Government says, I cannot refrain from observing that the case of that province relatively to others, particularly Madras and Bombay, appears to have been somewhat exaggerated Again, such benefits as Madras and Bombay may derive from decentralization and consolidation scheme is, as the Government of India point out, temporary, while on the other hand it may be noted that as part of the debt scheme the Punjab is left with a large block of debt on exceptionally favourable terms.

The
Secretary of
State's
Remarks

I sympathize with the natural disappointment of the Punjab Government that that province alone of the provinces of India should receive no assistance, except to a trifling degree through debt scheme"

Thus the Punjab was expected to stand fully on her own legs without looking for any outside help.

The Provincial Autonomy was introduced on April 1, 1937. The present Government with a Unionist cum Hindu National Progressivist, and Sikh Nationalist majority assumed office on that very day. But the finances of the Province

1935-36
Budget

were a legacy from the previous years. The Budget for 1935-36 originally provided for a trifling surplus of Rs. 56,000, but the actual working of the year showed an actual deficit of a little over two lakhs. In 1936-37 the Revenue receipts were estimated at Rs. 10,44,20,000 and Revenue expenditure at Rs. 10,60,58,000, thus showing a deficit of a little over Rs. 16½ lakhs. The corresponding revised figures for the year (1936-37) given at the time of the presentation of the Budget in June, 1937, were Revenue receipts Rs. 10,86,53,000 and Revenue expenditure Rs. 10,63,66,000, thus yielding a surplus of about Rs. 23 lakhs in the place of the budgeted deficit of Rs. 16½ lakhs. The actual working of the year, however, showed a realized actual surplus of nearly Rs. 31 lakhs, viz., Rs. 30,88,000, after utilizing Rs. 15 lakhs towards reducing the capital account of the Hydro-Electric scheme. This surplus of about Rs. 31 lakhs was merged in the general Provincial balances.

1937-38
Budget

The first Budget after Provincial Autonomy was introduced in June, 1937, to have effect from 31st July, 1937, four months later than the usual time. The Budget estimated the Revenue receipts for the year to be Rs. 10,90,39,000 and the Revenue expenditure to be Rs. 10,88,67,000, thus showing a small surplus of Rs. 1,72,000. It was pointed out that this small surplus was also liable to disappear as no provision has been made for certain expenditure that could be foreseen. The Hon'ble Finance Minister stated :

" If such a deficit should appear, due, as I have said, to factors now forecastable, we need have no fears, particularly as this year's revenue has suffered so heavily because of unusual calamities in hailstorm, cyclone and untimely rains. The deficit would indicate no normal or permanent feature of our finances."

Huge surplus

At the time of the presentation of the Budget last year (1938-39), it was pointed out that the real surplus on the year's (1937-38) revised figures was Rs. 50,20,000 in spite of the provision for large revenue remissions and other relief to the agriculturists, an increased outlay on the beneficent departments, and additional expenditure consequent on the introduction of the new reforms. This surplus was in addition to the sum of Rs. 11.04 lakhs to be received from the Government of India under the Niemeyer arrangements. Thus the total surplus was Rs. 61 lakhs. Rs. 55 lakhs from this were utilized for the

creation of a special Rural Development Fund, leaving a surplus of Rs. 6 lakhs. When the final accounts for the year were prepared, this small surplus of Rs. 6 lakhs rose to Rs. 32 lakhs. Apart from this increase in the surplus by Rs. 26 lakhs, there was an increase of Rs. 42 lakhs on the income side of the Budget under the heads of debt deposits and remittance

The Budget for the last year, *viz.*, 1938—39, estimated the Revenue receipts to be Rs. 11,41,56,000 and Revenue expenditure to be Rs. 11,36,42,000, thus providing for a small surplus of Rs. 5.14 lakhs. This included Rs. 6 lakhs which was expected to be the surplus from the last year but did not include the sum that was to be received from the Centre under the Niemeyer arrangements.

A brief summary of the Budget (1938—39) is given below :—

Revenue Receipts

Land Revenue	...	...	...	...	Rs.	2,93,55,000
Provincial Excise	...	...	...	...	"	1,04,11,000
Stamps	...	...	...	...	"	.90,74,000
Forests	...	...	...	...	"	24,20,000
Registration	...	...	...	...	"	9,54,000
Receipts under Motor Vehicles Taxation Acts				"		7,60,000
Other Taxes and Duties	...	...	...	...	"	2,67,000
Irrigation	...	...	...	...	"	4,51,43,000
Interest	...	...	...	...	"	3,97,000
Administration of Justice	...	...	...	...	"	7,80,000
Jails and Convict Settlements	...	...	...	...	"	3,88,000
Police	...	...	...	...	"	2,45,000
Miscellaneous Departments	...	...	...	...	"	2,63,000
Education	...	...	...	...	"	19,69,000
Medical	...	...	...	...	"	11,75,000
Public Health	...	...	...	...	"	3,01,000
Agriculture	...	...	...	...	"	18,40,000
Veterinary	...	...	...	...	"	2,57,000
Co-operation	...	...	...	...	"	2,37,000
Industries	...	...	...	...	"	5,75,000
Civil Works and Miscellaneous Public Improvements	...	...	...	...	Rs.	49,66,000
Miscellaneous	...	...	...	...	"	20,69,000
Miscellaneous Adjustments between Central and Provincial Governments	...	...	...	...	"	3,10,000
Extra-ordinary Receipts	...	...	...	...	"	30,59,000
Total Revenue						11,72,15,000

Expenditure Charged to the Revenues

Land Revenue	...	...	...	...	Rs.	43,31,000
Provincial Excise	...	...	...	...	"	11,54,000
Stamps	..	...	...	...	"	1,63,000

1938-39
Budget

				Rs.	
Forests	...	...	...	23,20,000	
Registration	...	...	...	73,000	
Charges on account of Motor Vehicles					
Taxation Acts	...	...	...	64,000	
Other Taxes and Duties	...	...	...	91,000	
Irrigation	...	...	...	1,48,60,000	
Debt Services	...	...	...	23,69,900	
General Administration	...	...	...	1,15,21,000	
Administration of Justice	...	...	...	54,60,000	
Jails and Convict Settlements	...	...	...	30,80,000	
Police	...	...	...	1,25,41,000	
Miscellaneous Departments	...	...	...	1,89,000	
Scientific Departments	...	...	...	37,000	
Education (European and Anglo-Indian)				6,34,000	
Education (Excluding European and Anglo-Indian)	...	...	...	1,56,81,000	
Medical	...	...	...	52,54,000	
Public Health	...	...	...	18,16,000	
Agriculture	...	...	...	40,33,000	
Veterinary	...	...	...	17,57,000	
Co-operation	...	...	...	16,62,000	
Industries	...	...	...	20,14,000	
Civil Works and Miscellaneous Public Improvements	...	...	...	1,59,24,000	
Miscellaneous	...	...	...	27,83,000	
Miscellaneous adjustments between the Central and Provincial Governments					
Extraordinary Items					
Capital Expenditure charged to Revenue				12,63,000	
Total Expenditure charged to Revenue				11,49,05,000	

Broad Features of the Budget

A very welcome feature of this Budget was an increased expenditure on the Beneficent Departments. In 1936-37 this expenditure was Rs. 2.87 crores. For 1937-38 there was an advance of Rs. 41 lakhs over it, the total amount of expenditure being Rs. 3.28 crores. There is, however, much further scope in respect of expenditure on these activities. Moreover, the Government, it was given out, was contemplating heavy calls on its expenditure in order to give a substantial relief to small landholders, introduction of prohibition in some selected districts and some other schemes of industrial development. For this reason fresh sources of revenue and drastic retrenchment in expenditure are required. The Government is keenly waiting for the Report of the Resources and Retrenchment Enquiry Committee to guide them in the dual task of finding new sources of revenue and effecting economies in certain

directions where they may be called for.*

Financial Relations between the Crown and the Indian States.—It is expressly laid down that the provisions mentioned above in connection with the financial relations of the Federation and the Provinces do not affect any duties or taxes levied in any Federated State otherwise than by virtue of an Act of the Federal Legislature applying in the State.† Separate and special provisions are made in the Act for regulating the financial relations between the Crown and the States. Much will also depend on the terms on which a particular State accedes to the Federation. Special provision is made for the supply of funds to the Crown for the discharge of functions in connection with the States that do not join the Federation. It is laid down that the Federation shall pay to His Majesty in each year the sums stated by His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States to be required for the discharge of those functions, which include payment of any customary allowances to members of the family or servants of any former Ruler of any territories in India.‡

This provision makes the Federal Revenues responsible for meeting the expenditure of the Crown in connection with the Non-Federating States and the sphere of activities of the Federated States outside the Federal sphere. This is rather unjust to the Federation because it is agreed that the relations of the States are directly with the Crown and not with the Government of India. If it is so, it should be the Paramount Power which should foot the bill in this connection. There might have been some justification for the payments being made from the coffers of the Government of India, when the tributes

Special provisions for the purpose

Supply of funds in respect of functions in relation to the Non-Federating States

Unjust to the Federation

* The state of affairs, as it has actually developed, in the Punjab is not as happy as described above. The Finance Minister had estimated a small surplus of Rs. 5 lakhs for the year 1938-39. According to the revised estimate this surplus would be changed into a deficit of Rs. 27 lakhs. For this year (1939-40) the Budget provides for a deficit of Rs. 29 lakhs. This not very welcome change is mainly due to the Hissar famine which has adversely influenced the finances of the Province. It was pointed out by the Finance Minister that but for the famine there would have been a surplus of Rs. 26 lakhs.

† Sec. 143 (1). ‡ Sec. 145.

received from the Indian States were credited to that Government. But now that the policy of gradual abolition of these tributes has been recommended, there does not seem to be any justification for this expense being charged on the Federal revenues.

The States' unwillingness to contribute to direct taxation

Taxes to which the States are liable.—The entry of the States in the Federation has made the problem of Federal finance all the more difficult. In accordance with the recognized principle that there should be a uniform distribution of burdens and advantages among the units of the Federation, the States must contribute their due share to the Federal fisc. While recognizing this, they made it clear that they were not prepared to allow the levy of direct taxation by the Federation in their territory. Thus it added to the troubles of the framers of the Constitution, as they were called upon to devise a scheme which should be satisfactory to the States but at the same time bring enough money to the Federation.

The States are not liable to direct Federal Taxes

Under the scheme of the Act, the States joining the Federation are not liable to direct Federal taxation, such as Income-tax, Succession Duties, Stamp Duties, Terminal Taxes, etc., except if they themselves agree to their levy by the terms of their Instruments of Accession. Corporation Tax can be extended to a Federated State after the lapse of ten years after the establishment of the Federation. In the case of this tax as well as the Federal surcharge on Income-tax, the Rulers of the Federated States have to be given the option of making payment to the Federal Government of an equivalent sum in lieu of the net proceeds which it is estimated would result from these taxes if levied and collected directly. In the case of the Corporation Tax, the Federal officers cannot call for any information or returns from any corporation in the State, but it is the duty of the Ruler to cause to be supplied the required information to the Auditor-General of India for the purpose of determination of these sums.

Corporation Tax leviable after ten years

Option to pay equivalent sums

Supply of information

Taxes that affect the States indirectly

Payment of Tributes, etc.

The States' contribution to the revenues of the Federation may be classified as follows:—

(i) *Taxes to which the States are liable to contribute in normal times*: Customs Duties; Export Duties; Federal Excise Duty; Salt Duty; Corporation Tax (leviable after ten years after the establishment of the Federation).

(ii) *Taxes to which the States are liable to contribute at the time of financial stringency*: Surcharge on Income-tax.

(iii) *Other sources of Revenue to which the States will contribute either directly or indirectly*: Certain fees on Federal matters; Profits on the working of Federal Railways, Postal Department, Mint and Currency, the Reserve Bank, etc.; and direct contributions, if any.

(iv) *The States are not liable to contribute to* Income-tax and Property Taxes levied in normal times and to Federal surcharges on Terminal Taxes, Stamp Duties, and Succession Duties even at the time of financial stringency.

It should, however, be pointed out that the Federated States, like the Provinces, are probably subject to the general power of the Governor-General to empower by a public notification the Federal Legislature or a Provincial Legislature to enact a law with respect to any matter not enumerated in the Federal, Provincial or Concurrent Lists, including a law imposing a tax not mentioned in these Lists.* The States, however, may save themselves from the operation of this provision by putting a condition in their Instruments of Instruction.

Remission of the States' Contributions.

"The entry of the States into Federation, involves some complicated financial adjustments mainly in respect of tributes and ceded territories; but these, though of importance to individual States, do not fundamentally affect the Federal finance scheme as a whole."†

These adjustments are provided for by the Act. The whole question was examined by the Indian States Enquiry Committee (Financial), commonly known as the Davidson Committee. The recommendations of the Committee were generally accepted by the Joint Parliamentary Committee and were embodied in the new Act.

Classification

General power of the Governor-General in respect of taxation

Financial Adjustments

The Davidson Committee's Enquiry

* Sec. 104 † J.P.C. Para. 263.

Payment of
Cash
Contribution
or Tributes
by the
States

In the first place, some States pay at present "cash contributions" or "tributes" to the Crown. These payments form part of the revenues of India.

"The amounts vary from Rs. 24½ lakhs in the case of Mysore to Rs. 3 in the case of a small State named Ranasan in the Mahikantha agency of the Bombay Presidency. The tributes have arisen from the terms on which territory was exchanged or restored, or from the settlements of claims between the Governments, but in many cases it is in lieu of former obligations to maintain or supply troops."*

Total
amount of
these
Contribu-
tions

Not feudal
in nature

Anomalous
in a Federa-
tion of equal
partners

Abolition of
the Tributes
recom-
mended

Ceded
Territories

Customs
Duty

Salt

Posts and
Telegraphs

The total amount of these "tributes" is a little over Rs. 77 lakhs per year including inter-State contributions that have been assigned to the British Government or that have lapsed. The Davidson Committee went into the origin of these tributes and opined that they were not feudal in nature, and were imposed in lieu of military guarantees. They become anomalous in a Federation where all units are supposed to be equal for the purposes of sharing benefits and burdens. The same may be said of the territories ceded to the British Government by the Indian States in the past. The Davidson Committee, therefore, recommended that the payment of these tributes should be abolished under certain conditions, and adjustments may be made in respect of them. Regarding "ceded territories" of the States, it recommended that compensation should be paid by the Federal Government to the States concerned, taking the net values of such territories as estimated at the time of cession as a basis for the purpose.

Immunities enjoyed by the States.—But the States also enjoy certain immunities or advantages which have a money value. They may be stated as under:—

(a) Certain States levy their own Customs Duty and enjoy immunity from contribution to the Central Customs Revenue. The value of this privilege is estimated to be approximately Rs. 182·42 lakhs a year.

(b) Certain States manufacture their own salt and enjoy immunity from contribution to the Central Salt Revenue. This involves the sum of Rs. 46·06057 lakhs per year.

(c) Certain States enjoy certain immunities in respect of the Posts and Telegraphs in the shape of free carriage of official State correspondence by the

* Ramasubrahmanyam, K. V.; "The Evolution of Indian Constitution" p. 130.

Postal Department, and of free annual grants of service stamps. The first involves a sum of Rs. 714,640 and the second involves the sum of Rs. 312,385 per year. Besides, certain States carry on their own postal system, having entered into conventions with the Government of India, while others do so without having entered into any conventions with that Government. The Committee could not estimate the money value of these.

(d) Certain States enjoy the privilege of having "Free Import of Goods in Bond." This privilege is particularly enjoyed by the State of Kashmir under the Treaty of 1870. The value of this, as estimated by the Davidson Committee, is Rs. 25 lakhs a year.

(e) Certain States enjoy certain rights regarding "Coinage and Currency."

"The number of States that possess rights of coinage are less than twenty and of these only seven deserve serious consideration, as having a right to mint coins of higher value, and only Hyderabad possesses a paper currency which produces considerable profit."*

The Committee does not recommend buying up of this privilege except in the case of Hyderabad as it thinks that the exercise of this right by the other States is not likely to involve them in any serious competition with the Federation. The value of the privilege enjoyed by Hyderabad is estimated to be about Rs. 17 lakhs per year. The total value of the immunities of all the States has been estimated to be about Rs. 225 lakhs a year.

Thus it will be understood that the Indian States owe something to the Government of India and the latter owe something to the Indian States. In the mutual adjustment, account must be taken of the credit and the debit sides. The Committee's recommendation, therefore, was that the value of the privileges and immunities enjoyed by the States should be set off against the value of the contributions, tributes, and the ceded territories. In other words the States should receive benefit only to the extent of the excess of the cash value of the latter over the former. A State, however, on joining the Federation can surrender a particular immunity or immunities. In this case there will be no debit against it to be availed of by the Federation. Moreover, the "immu-

Free Imports
of Good in
Bond

Coinage and
Currency

The debit
and credit
balance of
the States

Method of
Payment

* N. Raja Gopala Aiyangar: The Government of India Act, 1935, p. 188.

Loss to the Federation

nity debit" is not to be paid in cash by a State when it joins the Federation, but it is available only for setting off purposes against the money value of its claims. Thus if a State has not got any claim of that kind, it cannot be called upon to pay off its "immunity-debit," and thus leaving it to benefit to that extent. This means a definite loss to the future Federation of India as the value of the "immunity debit" due to the Federation is estimated to be more than Rs. 255 lakhs while the total claims of the States valued at are Rs. 117 lakhs a year. Even to the extent of full Rs. 117 lakhs the Federation cannot gain, because the States are treated in their individual capacities and as such are concerned only with their own immunities and claims. In the case of the States which have both credit and debit, there can be a set off, but where there is only credit, there cannot be any set off and the Federation suffers. In other words the creditor States are entitled to payment, but the debtor States have no liability to pay off to the Federation. This is calculated to work as inducement to certain States like Kashmir, Mysore, and Baroda, which gain financially by joining the Federation. The general recommendation of the Committee about the tribute is that in the case of the States where they exceed five per cent of their total annual revenues, they should go to the extent of the excess unconditionally whether the States join the Federation or not. This involves a sum of about Rs. 10 lakhs.

Regarding the remainder of the tributes, the Committee recommends conditional abolition on the States joining the Federation. The abolition in this case is also gradual, taking effect *pari passu* with the enjoyment by the Provinces of their share of Income-tax under S. 138, and in any event not later than a period of twenty years from the commencement of the Federation.

In other words, the period in which the tributes are to be abolished is to correspond to the period during which it is proposed to defer the full assignment to the Provinces of a share of Income-tax, subject to the maximum time limit of twenty years. Evidently the Income-tax paid by the Provinces and the "tributes" paid by the States have been considered analogous and, therefore, in the matter of receiving the share of Income-tax the Provinces, and in the matter of remission of the

Abolition of contributions exceeding five per cent of the total revenue of a State

Gradual Abolition of the remainder within 20 years

Income-tax and the Tributes considered analogous

tributes the States, have been treated alike. It may be noted here that the Government of India (Distribution of Revenues) Order in Council 1936 prescribes a period of ten years for the purpose. This is, however, subject to the power of the Governor-General to enlarge the period in the interests of the financial stability of the Federation.

Ceded territories and tributes have been treated alike, and the above provisions also apply to the former. But according to the recommendation of the Committee, the payments in respect of such territories should be conditional, commencing after the entry of the States concerned to the Federation.

States' Maritime Customs.—The Indian States enjoying a right to levy their own Sea Customs present a very difficult problem as far as their entry to the Federation is concerned. The total sum involved in respect of this right is Rs. 182 lakhs per annum, and the States concerned seem reluctant to give up this right. But the retention by any unit of the Federation of its own Sea Customs receipts runs counter to the ideal of a true Federation. The States' Enquiry Committee, therefore, observed :

" If, therefore, the port-owning States are to enter the Federation, as every one must desire that they should, room must be found for a compromise in which ideals and logic would yield in some measure to hard facts. An arrangement whereby the Maritime States were at least enabled to retain in their own hands the value of the duties on goods imported through their ports for consumption by their own subjects, even though it would involve some slight diminution of Federal Revenues, might well be accepted in a Federal scheme embracing so many diverse elements. In recommending that it be considered how far such an arrangement would be practicable, we do not exclude the possibility of modifications or adjustments to meet local circumstances."*

The Joint Parliamentary Committee wrote in this connection :—

" We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the Maritime States which have a right to levy Sea Customs is that they should be allowed to retain only so much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State; but we recognize that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with certain adjustments or modifications) impossible, then it seems to us that the question will have to be seriously considered whether the State could properly be admitted to the Federal system."†

Actual
Period fixed
by the Order
in Council

Same prin-
ciples also
apply to the
Ceded
Territories

Davidson
Committee's
observations

J. P. C.'s
recom-
mendations

* States Enquiry Committee Report. † Para. 265.

Land Customs Duties imposed by the Indian States.—It is desirable that there should be free internal trade in a Federation, the units considering themselves members of a sort of *Zollverein*. Only the Federal Government should have power to impose tariffs and restrictions on trade. In India, however, many States, notably Kashmir, enjoy this privilege and derive considerable revenue from it, which they can ill afford to lose. The J. P. C. observed on this point:

J.P. C.
Observations

" We recognize that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed Federation, and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The change must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion would have to be brought to bear upon the States."*

Proposals in the Act.—The recommendations of the Davidson Committee, supported by the J. P. C. as they are, have been embodied in the new Act, though they make the system rather complex and anomalous, and involve the Federation in a loss which is estimated to be approximately rupees one crore.

His Majes-
ty's Power to
receive pay-
ments

Payments from or by the Indian States.—All payments in respect of loans or other dues from any Indian State, which formed part of the revenues of India before the passing of this Act, are to be received by His Majesty. If His Majesty so directs, they shall be placed at the disposal of the Federation. His Majesty, however, can remit at any time the whole, or any part of any such contributions or payments, if he thinks fit to do so.†

Time limit
for the
remission of
contributions

Remission of States' Contributions.—His Majesty is empowered, in signifying his acceptance of the Instrument of Accession of a State, to agree to remit over a period not exceeding twenty years from the date of the entry of the State to the Federation any cash contributions which are payable by

* Para. 264. † Sec. 146.

that State. Moreover, where any territories have been voluntarily ceded to the Crown by a Federated State before the passing of this Act in return for specific military guarantees or for the discharge of the State from obligations to provide military assistance, that State shall receive such sums as in the opinion of His Majesty ought to be paid in respect of any such cession, if His Majesty directs to that effect while signifying his acceptance of the Instruments of Accession of that State. Where these payments are for military guarantees, these military guarantees shall be waived. Such a direction must secure that such remission of payment shall not be made until the Provinces have begun to receive their shares of the Income-tax ; and also that the remission shall be complete before the lapse of twenty years from the date of entry of the State in the Federation or before the end of the second prescribed period mentioned in the provision in respect of Income-tax, whichever first occurs. Besides no contribution shall be remitted except in so far as it exceeds the value of any privilege or immunity enjoyed by the State. Account shall be taken of the value of any such privilege or immunity in fixing the amount of any payments in respect of ceded territories. These provisions also apply in the case of any cash contributions the liability for which has been discharged by payment of a capital sum before the passing of this Act. In such a case His Majesty may agree that such capital sum shall be repaid either by instalments or otherwise. Such repayments are to be considered remissions for the purposes of these provisions.

Compensation in lieu of Ceded Territories

Military guarantees to be waived

Condition for the remission to take effect

Amount to be permitted

Immunities to be taken account of

Capital Payments

Meaning of Cash contributions

"**Cash Contributions**," as used here, mean the periodical contributions in acknowledgment of the suzerainty of His Majesty, including contributions payable in connection with any arrangement for the help of a State by His Majesty, and contributions in commutation of any obligation of a State to provide military assistance to His Majesty, or for the maintenance of a special force for service, or of local military force or Police, or in respect of the expenses of an agent, contributions fixed on the creation or restoration of a State, or a re-grant, or increase of territory, for grants of land on perpetual tenure or for equalization of the value of exchanged territory, and contributions formerly payable to another State

No injustice
to the States

necessary in the interests of the general advance, the States in view of their claims to internal sovereignty could not be treated nor were they willing to be treated, in the same way. In the actual scheme they have not allowed the framers to deal with their finances in the way considered necessary for the general advance, but insisted and have secured the recognition of their interests and rights. The control of the Federation over their finances would extend to a limited sphere, and even that will depend on the terms of the individual Instruments of Accession. Under the circumstances they can have no claim to any further financial help from the Federation than has been allowed, and can have no ground to complain against this alleged discriminatory treatment.

Against the opinion of Professor Shah and Mr. Varadarajan may be quoted the opinion of Dr. Sir Shafsat Ahmad Khan :

"The financial scheme evolved by the Round Table Conference is defective from the point of view of equality of Federal units. The incidence of taxation in the two classes of units varies considerably, and British Indian Provinces are called upon to pay a disproportionate amount of Federal expenditure The cost to British India of attaining national unity and solidarity is not too high for the realization of a dream of twenty centuries."*

Incidence of
taxation
unfair to the
Provinces

According to Mr. M. K. Muniswami :

"Ultimately the position of some of the States would be similar to the position of 'Deficit Provinces' to be subsidised by the Federation. We may derive such consolation as we may from the observations of the Davidson Committee that 'By the very fact of their entry into the Federation, the States make a contribution which is not to be weighed in golden scales; if after every adjustment has been made there is still a substantial balance against British India it ought not to matter.' Thus the States bear only the burden of indirect taxes and of a military force for the defence of India costing them a paltry amount (two crores and 38 lakhs). While the States may be permitted their inland customs duties or other privileges, there is no reason why they should not pledge their revenues as a security for federal loans especially in view of the fact that in the new Federal Legislature they will have enough pull."

Weighted in
favour of the
States

" It is perhaps in the fitness of things that an anomalous Federation like the Indian should have an anomalous and unequal financial settlement But as already pointed out it is weighted in favour of the units of the Federation, more particularly the State units †

In view of these opinions, and what has been said above, it may be asserted that the system of financial adjustments is favourable to the States.

* The Indian Federation: p. 191.

The Indian Journal of Economics, April, 1936, pp. 442, 443.

Miscellaneous Financial Provisions.—No burden can be imposed on the revenues of the Federation or of the Provinces except for the purposes of India or some part of India. Nevertheless the Federation or a Province may make grants for any purpose irrespective of the fact that the Federal or the Provincial Legislature cannot make laws about it.*

Expenditure
defrayable
out of Indian
revenues

As far as the custody of public money is concerned, it is provided that the Governor-General or a Governor, as the case may be, exercising his individual judgment, may make rules securing that all public moneys shall, with any specified exceptions, be paid into the public account of the Federation or of the Province. These rules may prescribe or authorize some persons to prescribe the procedure regarding payment, withdrawal, and custody of moneys into the public account and any other matters connected with that.†

The custody
of Public
moneys

The following powers in respect of the Reserve Bank of India are to be exercised‡ by the Governor-General in his discretion :

Exercise by
the
Governor-
General of
certain
powers with
respect to
the Reserve
Bank

- (i) the appointment and removal from office of the Governor and the Deputy Governors of the Bank, the approval of their salaries and allowances and the fixing of their terms of office ;
- (ii) the appointment of an officiating Governor or Deputy Governor of the Bank ;
- (iii) the supersession of the Central Board of the Bank and any action connected therewith ;
- (iv) the liquidation of the Bank.

The Governor-General is to exercise his individual judgment in nominating Directors of the Reserve Bank of India and in removing any such Director. No Bill or amendment affecting the coinage or currency of the Federation or the constitution or functions of the Reserve Bank of India can be introduced in the Federal Legislature without the previous sanction of the Governor-General to be given in his discretion.§

Previous
sanction of
the
Governor-
General to
legislation
in respect
of Reserve
Bank,
Currency
and
Coinage

The Federal property vested in His Majesty is exempt from all taxes imposed by any authority

* Sec. 150. † Sec. 151. ‡ Sec. 152. § Sec. 153.

Exemption of certain public property from taxation

within a Province or a Federated State, except if it is otherwise provided by a Federal law, but any such property which was liable to such a tax before April 1st, 1937, shall continue to be so, as long as that tax continues, until it is otherwise provided by a Federal Act."*

Exemption of Provincial Governments and Rulers of Federated States in respect of Federal taxation

Similarly a Provincial Government and the Ruler of a Federated State are not liable to Federal taxation in respect of lands or buildings situated in British India or income accruing, arising or received in British India. But if a trade or business of any kind is carried on by or on behalf of such a Provincial Government in any part of British India outside the Province or by a Ruler in any part of British India, the above-mentioned exemption does not apply to it. Moreover a Ruler of a State is not exempted from the payment of Federal taxation in respect of his personal property in lands, buildings or other personal income. This provision, however, does not affect any exemption from taxation enjoyed as a matter of right at the time of the passing of this Act by the Ruler of an Indian State regarding Indian Government Securities issued before that date.†

Adjustment in respect of certain expenses and pensions

Provision is also made regarding proper adjustment in respect of certain expenses and pensions.‡ It is laid down that where the expenses of any court or commission, or the pension of a person who has served under the Crown in India are charged on the Federal or the Provincial revenues, and in the case of the Federal revenues the court or commission serves any of the separate needs of a Province, or the person in question has served wholly or in part in connection with the Provincial affairs, such contribution in respect of the expenses or pension shall be paid to the Federal revenues from the Provincial revenues as may be agreed, or in the absence of the agreement, as may be determined by an arbitrator to be appointed by the Chief Justice of India. Similarly in the case of a charge on the Provincial revenues, if the court or commission serve any of the separate needs of the Federation or another Province, or the person has served wholly or in part in connection with the Federal affairs or the affairs of another Province, such contribution in respect of the expenses or pension shall be paid to that Province, from the revenues of

* Sec. 154. † Sec. 155. ‡ Sec. 156.

the Federation or of the other Province, as may be agreed, or in the absence of agreement, as may be determined by an arbitrator to be appointed by the Chief Justice of India.

The Federation and the Provinces must provide sufficient moneys in the hands of the Secretary of State for making payments in respect of any liability which has to be met out of the Federal or the Provincial revenues as the case may be. Similarly the Secretary of State and the High Commissioner for India must receive sufficient money to pay all pensions payable out of the Federal or the Provincial revenues, as the case may be, in the United Kingdom or through officers accounting to the Secretary of State or to the High Commissioner.*

Supply of
Funds to the
Secretary of
State

Adjustment of Monetary Relations with Burma —
Burma was separated from India on April 1st, 1937. His Majesty in Council was empowered to make the necessary provisions for defining and regulating the relations between the monetary systems of India and Burma and also for giving effect to any arrangements with respect to financial relations made before April 1st, 1937, with the approval of the Secretary of State by the Governor of Burma in Council with the Governor-General in Council or any other person. Any sum required by such an Order in Council to be paid by the Federation is charged on the Federal revenues. His Majesty in Council can also make provisions for the grant of relief from any Federal tax on Income in respect of income taxed or taxable in Burma. Lastly, with the purpose of preventing undue disturbance of trade between India and Burma, in the period immediately following the separation of India and Burma and also for safe-guarding the economic interest of Burma during this period, His Majesty may by Order in Council give necessary directions regarding the duties which are to be levied on goods imported into or exported from India or Burma, and connected matters.† Effect has been given to these provisions by the India and Burma (Burma Monetary Arrangements) Order, 1937. Burma is kept under the currency system of India. The Reserve Bank of India is to perform similar functions in relation to Burma which it performs in relation to India subject to proper adjustments of the profits accruing from currency and note issue between

Power of
His
Majesty

Relief in
respect of
Income-tax

Customs
Duties on
India Burma
trade

* Sec. 157. † Sec. 158, 159, 160.

the Government of Burma and the Government of India. Regarding share of Burma in the Public Debt of India, provision is made by the Government of Burma (Miscellaneous Financial Provisions), Order 1937, in accordance with the recommendations of the Amery Tribunal. Under this Order the Government of India was to receive from the Government of Burma a sum of Rs. 3,23,01,000 in respect of the year 1937-38. The sum in respect of subsequent years is to be fixed by further Orders in Council.

Share of
Burma
in the Public
Debt of
India

J. P. C.'s
Observation

Additional Cost of Federation.—Another important aspect of Federal finance of India, as has been pointed out before, is the additional expenditure involved in the proposed constitutional changes. In respect of this, the J. P. C. observed :

"We have been furnished with an estimate of the new overhead charges which would result from the adoption of the Constitution proposed in the White Paper ; that is to say, the additional expenditure required by reason (*inter alia*) of an increase in the size of the Legislatures and electorates, or the establishment of the Federal Court. These would amount to $\frac{1}{4}$ crore ('56) per annum, attributable to the establishment of Provincial Autonomy, and another $\frac{3}{4}$ crore (.56) per annum, attributable to the establishment of the Federation. We understand that these would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes. The amount, under present financial conditions, is by no means negligible, but is not of very serious dimensions. There are, however, apart from the new overhead charges, certain other factors affecting the financial position which it is necessary to pass in review. The most important of these is the separation of Burma ; and although this will not in itself involve a financial loss to the taxpayers of India and of Burma considered as a whole, the revenues of India will suffer a loss estimated to be possibly as much as 3 crores (2.2) per annum, less the yield of any revenue duties on imports from Burma, which may be introduced from the date of separation."*

Loss on
account
of the
separation
of Burma

The actual loss to the Indian Exchequer consequent on the separation of Burma from India in the year 1937-38 was Rs. 4.26 lakhs.

According to Sir Malcolm (later Lord) Hailey, the estimated increased expenditure of the Central Government in respect of the constitutional changes is as under :—

Increased expenditure in respect of the Federal Court and the Federal Legislature	... ...	'56 million pounds
Reduction of Currency receipts on account of the establishment of the Reserve Bank...	'75 million pounds	
Disappearance of receipts from opium	... '47 million pounds	
Loss on account of the separation of Burma	... 2'00 million pounds	
Grants to the deficit Provinces	... 1'00 million pounds	
		—
		... 4'78 million pounds

Lord
Hailey's
Memorandum

The total new expenditure mentioned in Sir Malcolm (now Lord) Hailey's Memorandum is 6 million pounds. This is a fairly gloomy outlook and the pertinent question was asked if this new expenditure could be provided for, or that the proposed Federation will split on the rock of finance. The position was carefully examined by Sir Otto Niemeyer, who wrote :

"On a general review of the existing tendencies, I should conclude that the budgetary prospect of India, given prudent management of her finances, justify the view that adequate arrangements can be made step by step to meet the financial implications of the new Constitution. A change of constitutional and administrative arrangements cannot of course in a moment after the general financial position or enable all conceivable financial desires to be met, but I see no reason why a cautious but a steady advance should not be achieved."

Sir Otto
Niemeyer's
observation

He, therefore, recommended that—

"His Majesty's Government may safely propose to Parliament that Part III of the Government of India Act, 1935, should be brought into operation a year hence."

Sir Otto's
Recommen-
dation

Thus Provincial Autonomy was inaugurated on April 1, 1937. It remains to be seen how the Federation fares financially, when it is established :

Provisions in respect of Borrowing.—Special provision is made in the Act for borrowing by the Secretary of State, the Federal Government, and the Provincial Governments. All powers* vested in the Secretary of State in Council of borrowing on the security of the revenues of India have ceased since April 1, 1937, when the Provincial part of the Act commenced. But during the period of transition till the establishment of the Federation of India, the Secretary of State may, within the prescribed limits contract sterling loans on behalf of the Governor-General in Council, if the Parliament so provides by passing an East India Loans Act. Subject to this provision, the Federation can borrow upon the security of the Federal revenues and give guarantees within the limits fixed by an Act of the Federal Legislature.† Similarly the Provinces can borrow upon the security of the Provincial revenues and give guarantees within limits fixed by the Acts of the Provincial Legislatures.‡ Within the limits mentioned above and subject to such conditions that may be imposed by it, the Federation may make loans to the Provinces or give guarantees in respect

The borrow-
ing powers
of the Secre-
tary of State
in Council

Borrowing
by the Fede-
ral Govern-
ment

Borrowing
by the Pro-
vincial Gov-
ernments

Federal
loans to the
Provinces

* Sec. 161. † Sec. 162. ‡ Sec. 163.

Limits on the borrowing powers of the Provinces

Disputes to be decided by the Governor-General

Loans by the Federal Government to the Federated States

Application of Colonial Stock Acts to stocks issued by the Federation

Instructions to the Governor-General

of Provincial loans. Sums required for making loans to the Provinces are to be charged on the Federal revenues. The Provinces cannot borrow outside India without the consent of the Federation. Nor can they raise any loan if they still owe something in respect of a loan made to them by the Federation or the Governor-General in Council, or in respect of a loan about which a guarantee has been given by the Federation or by the Governor-General in Council. This consent may be made to depend on conditions which the Federation may think fit to impose, but it cannot be withheld unreasonably. If sufficient cause is shown the Federation cannot refuse to make a loan to, or to give a guarantee in respect of a loan raised by a Province, or impose any unreasonable condition. If there is any dispute about this, the Governor-General shall finally decide it at his discretion.*

As in respect of the Provinces, so in respect of the Federated States, the Federation may make loans to them subject to conditions which it may think fit to impose. And subject to fixed limits as mentioned above, it can give guarantees in respect of loans raised by any Federated State.†

The Colonial Stock Acts, 1877 to 1900, apply‡ to the sterling stocks issued after the establishment of the Federation though the procedure laid down in Sec. 20 of the Colonial Stock Act, 1877, in respect of bringing proceedings is not compulsory in this case. Any conditions prescribed by the Treasury under Sec. 2 of the Colonial Stock Act, 1900, are deemed to have been fulfilled in respect of such stock issued by the Federation until Parliament otherwise determines. And securities in which a trustee might invest trust funds before April 1, 1937, continue to be trust securities. These provisions introduce the necessary changes in respect of the borrowing powers of the Federation and the Provinces in consonance with the transfer of finance to the control of the popular Ministers, and the popular Legislatures both at the Centre and in the Provinces. The Governor-General, however, is instructed in his Instrument of Instruction to see that a —

"borrowing policy is not pursued which would in his judgment prejudice the credit of India in the money markets of the world."

* Sec. 163. † Sec. 164. ‡ 165.

Audit and Accounts.—Under the old Constitution, audit and accounts in India, both Central and Provincial, were carried out by a combined staff under the Auditor-General. Audit of the accounts of the Secretary of State was carried out by the Auditor of Indian Home Accounts. The report of the former was presented to the Indian Legislature while that of the latter was presented to the Parliament. As finance is a transferred subject under the new Constitution, it is necessary that the Auditor-General of India should report to the Governments and the Legislatures in India, instead of the Secretary of State in Council. The J. P. C. recommended the continuation of the centralized system of Audit and Accounts though the Provinces were to be allowed to have their own systems if they so desired. The audit of the accounts of the offices of the Secretary of State and the High Commissioner, in the opinion of the Committee, should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature.*

The Auditor-General of India.—The Act embodies these recommendations. It provides that there shall be an Auditor-General of India, to be appointed by His Majesty and removable from office only in the same way as a Judge of the Federal Court. His conditions of service are to be prescribed by His Majesty in Council, subject to the condition that he shall not be eligible for further office under the Crown in India after he ceases to be the Auditor-General. His salary or his rights in respect of leave of absence, pension or age of retirement cannot be varied to his disadvantage after his appointment. The salary, allowances, and pensions payable to or in respect of the Auditor-General are to be charged on the Federal revenues. The salaries, pensions, etc., of his staff are also to be paid out of the Federal revenues.†

He is to perform such duties and exercise such powers in relation to the accounts of the Federation and of the Provinces as may be prescribed by an Order in Council or by rules made under it, or by any subsequent Act of the Federal Legislature varying or extending such an Order. But no such Bill or amendment can be introduced or moved without the previous sanction of the Governor-General in his discretion.‡ The accounts of the Federation must be

The Present System

J. P. C.'s Recommendations

Appointment

Conditions of Service

Salary, Allowances and Pensions

Powers and Duties

* Paras. 396 and 397. † Sec. 166. ‡ Sec. 166 (3).

Power to issue directions to the Provinces

kept in the form prescribed by the Auditor-General of India with the approval of the Governor-General. With a similar approval he may issue directions with regard to the methods or principles in accordance with which any accounts of the Provinces ought to be kept, and the Provincial Governments must obey these directions.* The Auditor-General of India's reports relating to the accounts of the Federation are to be submitted to the Governor-General, who is to get them placed before the Federal Legislature. Similarly the reports of the Auditor-General of India or of the Auditor-General of a Province relating to Provincial accounts, are to be submitted to the Governor of the Province, who is to get them placed before the Legislature of the Province.†

Reports to be submitted to the Governor-General and laid before the Federal Legislature

Appointment

The Provincial Auditors-General.—Provision is also made for the appointments of the Auditors-General for the Provinces. If a Provincial Legislature passes an Act after April 1, 1939, charging the salary of an Auditor-General for that Province on the Provincial revenues, His Majesty may appoint such an Auditor-General. The latter shall perform the same duties and the same powers in relation to the audit of Provincial accounts as the Auditor-General of India. This appointment however, cannot be made until after three years after the passing of the Provincial Act providing for the appointment. The above-mentioned provisions in relation to the Auditor-General of India in respect of salaries, duties, etc., are also applicable to the Auditor-General of a Province subject to the condition that the functions of the Federal Legislature and the Governor-General in that case are to be performed by the Provincial Legislature and the Provincial Governor in this case, and for "the revenues of the Federation" is to be substituted "the revenues of the Province. Moreover a Provincial Auditor-General is eligible for appointment as the Auditor-General of India.‡

Conditions of Service

Eligibility for appointment as the Auditor-General of India

Appointment

The Auditor of Indian Home Accounts.—Provision is made in the Act for an Auditor of Indian Home Accounts. He is to be appointed by the Governor-General in his discretion and is removable from office in the same way and for similar reasons as a Judge of the Federal Court. The conditions of service for

* Sec. 168. † Sec. 169. ‡ Sec. 167.

this officer are also to be prescribed by the Governor-General in his discretion, but his salary and rights in respect of leave of absence, pension or age of retirement cannot be changed to his disadvantage after his appointment. He shall perform such duties and exercise such powers in respect of transactions in the United Kingdom affecting the revenues of the Federation, of the Federal Railway Authority, or of any Province, as may be prescribed by, or by rules under an Order of His Majesty in Council, or by any Act of the Federal Legislature varying or extending such an Order, but no Bill or amendment for this purpose can be introduced without the previous sanction of the Governor-General to be given at his discretion.

The Auditor of Indian Home Accounts shall work under the general superintendence of the Auditor-General of India. His report regarding transactions affecting the Federal revenues is to be submitted to the Auditor-General of India, who shall include it in his report to be submitted to the Governor-General. His report regarding transactions affecting the revenues of a Province having an Auditor-General of its own, is to be submitted to that Auditor-General. The latter shall include it in his report for submission to the Governor of his Province.

The expenses, including the salary, allowances and pension, of the Auditor of Indian Home Accounts are charged on the revenues of the Federation. Similar expenses of his staff are also to be paid out of the Federal revenues.

It is also provided in the Act that His Majesty in Council may require the Auditor of Indian Home Accounts to perform in respect of Burma wholly or partially the functions which he performs in relation to India. In that case he may make the necessary provision and fix the payments to be made from the revenues of Burma to the revenues of the Federation in respect of the above mentioned services.*

Audit of Accounts in respect of the Crown's functions regarding the Indian States.—It is provided that the accounts relating to the discharge of the functions of the Crown in its relations with the Indian States shall be audited by the Auditor-General of India. These accounts concerning transactions in the United

Condition of Service

Functions

Report to be submitted to the Auditor-General of India or the Auditor General of the Province

Expenses charged on the Federal revenues

Functions in respect of Burma

To be done by the Auditor-General of India

Kingdom shall be audited by the Auditor of Indian Home Accounts, who shall act on behalf of and under the general supervision of the Auditor General of India. The annual audit reports of these accounts shall be made to the Secretary of State for India by the Auditor-General.*

Vesting of lands and buildings

Provisions in respect of Property.—Special provisions in consonance with the new constitutional changes are laid down in the Act in respect of property, contracts, liabilities, and suits. The lands and buildings in a Province, which were vested in His Majesty before April 1, 1937 for the purposes of the government of India are now vested in His Majesty for the purposes of the government of that Province unless they were used at that time otherwise than under a tenancy agreement between the Governor-General in Council and the Government of that Province, for purposes which are now the purposes of the Federal Government or of His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States. There is another saving in the case of lands and buildings formerly used or intended to be used for the above-mentioned purposes, or retained for future use for such purposes or for advantageous disposal by sale under a certificate of the Governor-General in Council or the Crown Representative. Other lands and buildings in the Province, and lands and buildings situated in India elsewhere than in a Province are vested in His Majesty for the purposes of the government of the Federation or for the purposes of the exercise of the functions of the Crown in its relations with Indian States according to the purposes for which they were used before April 1, 1937. The lands and buildings situated elsewhere than in India, except those situated in Burma or Aden, are vested in His Majesty for the purposes of the Federal Government. But if they were used before April 1, 1937, for the purposes of the department of the Secretary of State in Council, they are vested in His Majesty for the purposes of His Majesty's Government in the United Kingdom.

For the purposes of the Provinces

For the purposes of the Federation

For the purposes of His Majesty's Government in the United Kingdom

Sale of this property

The property of the last class cannot be sold or put to uses not connected with the discharge of the functions of the Crown in relation to India or Burma, except with the consent of the Governor-General. It

shall, however, be under the management of the Commissioners of Works. The contents of these buildings other than money or securities are also subject to these provisions. This is subject to the provision that such articles and classes of articles as may be agreed upon between the Secretary of State and the Governor-General can be sold or put to uses not connected with the discharge of the functions of the Crown in relation to India or Burma without the consent of the Governor-General. Moreover the contents of these buildings shall be under the control of the Secretary of State. It is also provided that any question, which may arise within the next five years after April 1, 1937, as to the purposes for which lands and buildings are vested in His Majesty, may be determined by His Majesty in Council.*

Other property vests in His Majesty for the purposes of the Federal Government, or of the exercise of the functions of the Crown in its relations with Indian States, or of a Provincial Government as was the case before April 1, 1937. But all moneys that were in the public account under the custody of the Governor-General in Council before April 1, 1937, vest in His Majesty for the purposes of the Federal Government. And all credits and debits of the Local Government of any Governor's Province other than Burma in account with the Governor-General in Council are to be deemed to be credits and debits of the corresponding Province under this Act in account with the Federation.

All other property, including money, securities, bank balances and movable property, vested in His Majesty but under the control of the Secretary of State in Council before April 1, 1937, is to vest after that date in His Majesty for the purposes of the Federal Government, the exercise of the functions of the Crown in its relations with the Indian States or of a Provincial Government, as the Secretary of State may determine keeping in view the relevant circumstances. And the Secretary of State is empowered to deal with this property in accordance with his decision.

Arrears of any taxes outstanding before April 1, 1937 are to be considered as due to and are recoverable by the Federal Government or a Provincial Govern-

Management

The control
of the
Secretary of
State

Decision of
a dispute

Other
property

Money and
Public
Accounts

Other
property
under the
control of
the Secretary
of State
before April
1, 1937

Arrears of
taxes

ment according as any of them is a Federal or a Provincial tax, respectively. This provision also applies to equipment, stores, moneys, bank balances and other property held in connection with His Majesty's Indian forces stationed in Burma* (not being forces raised in Burma) except to property or arrears of taxes in Burma and Aden which was in the possession of or under the control of, or held on account of the Local Government of Burma or Aden immediately before 1st April, 1937.

Property
accruing by
escheat or
lapse, or
as *bona
vacantia*

It is provided in respect of any property in India accruing to His Majesty by escheat, lapse, or as *bona vacantia* for want of a rightful owner, that if such a property is situated in a Province, it vests in His Majesty for the purposes of the Government of the Province, and in other cases vests in His Majesty for the purposes of the Government of the Federation. Such a property if, when it accrued to His Majesty, was under the possession of the Federal Government, it is to vest in His Majesty for the purpose of that Government; and if it was under the possession of a Provincial Government, it is to vest in His Majesty for the purpose of that Government in accordance with the purpose for which it was used or held previously.†

Acquisition
and sale of
property

The executive authority of the Federal Government and that of a Provincial Government include the grant, sale, disposition, or mortgage of any property vested in His Majesty, and the purchase or acquisition of property on behalf of His Majesty for their respective purposes, subject to any Act of the appropriate Legislature. But any land or building used as an official residence of the Governor-General or a Governor cannot be sold, nor the purposes for which it is being used can be changed, except with the concurrence in his discretion of the Governor-General or the Governor in their respective spheres.‡

Expressed to
be made by
the Governor-General
or a
Governor

Provisions in respect of Contracts.—The executive authority of the Federal or of a Provincial Government extends over the making of contracts in their respective spheres. These contracts must be expressed to be made by the Governor-General, or by a Provincial Governor as the case may be. All such contracts and all assurances of property must be executed on behalf of the Governor-General or a Provincial Governor by

* Sec. 173. † Sec. 174. ‡ Sec. 175.

persons authorised by him in an authorised manner. This is of course subject to the provisions of this Act regarding the Federal Railway Authority.* Any contract made by the Secretary of State in Council before April 1, 1937, has effect as made on behalf of the Federation or a Province according to the purpose for which it was made, and can be enforced accordingly.†

Contracts
made by the
Secretary of
State in
Council
before April
1, 1937

Provisions in respect of Loans and Financial Obligations.—All outstanding liabilities in respect of loans, guarantees, and other financial obligations of the Secretary of State in Council before April 1, 1937, which were secured on the Indian revenues are now liabilities of the Federation and are secured on the revenues of the Federation and all the Provinces. All enactments relating to these loans and guarantees, etc., have effect, the Secretary of State taking the place of the Secretary of State in Council and subject to other modifications deemed necessary by His Majesty in Council. The payment of principal or interest in respect of the securities on which interest is payable in sterling, being the liability of the Secretary of State in Council, is not subject to any deduction in respect of any taxation imposed by any Indian Law. All loans or financial obligations of any Local Government, *viz.*, a Provincial Government, secured upon the revenues of the Province before April 1, 1937, have become after that date the liabilities of and are secured on the revenues of that particular Province.‡

Financial
obligations
of the
Secretary of
State in
Council
before April
1, 1937

Sterling pay-
ments not
subject to
Indian
taxation

Financial
obligations
of a Local
Government

Provisions in respect of Suits and Proceedings.—The Governor-General, a Provincial Governor, the Secretary of State, and any person making or executing any contract on their behalf are not to be held personally liable in respect of any contract made before or after the passing of this Act.§ It is provided that the Federation or a Provincial Government may sue or be sued by the name of the Federation of India and the Provincial Government in relation to their respective affairs in cases where the Secretary of State in Council could sue or be sued before the passing of this Act. Rules of court made for the purpose are to provide that in cases of suits in the United Kingdom by or against the Federation, a Province, or the Federal Railway Authority, service of all proceedings may be effected upon the High Commissioner for India or upon a specified represen-

No personal
liability

The Feder-
ation or a
Provincial
Governmen-
t may sue or
be sued

* Sec. 175. † Sec. 177. ‡ Sec. 178. § Sec. 175 (4).

Suits in the
United
Kingdom

tative of the Federation, the Province, or the Railway Authority.*

Suits against
the Federa-
tion, the
Provincial
Governments
or the
Secretary of
State

Any proceedings, which before the passing of this Act could be brought against the Secretary of State in Council, can, in the case of a liability arising before April 1, 1937, or arising under any statute or contract passed or made before that date, including a supplementary contract : be brought against the Federation or a Province according to the subject matter, or at the option of the complainant against the Secretary of State. Any sum order to be paid by the Secretary of State by way of debt, damages, or costs in any such proceedings, and any expenses incurred by him, are to be paid out of the Federal or the Provincial revenues, as the case may be. In case of proceedings brought against the Secretary of State, the payment is to be made out of the Federal or the Provincial revenues as he may direct. In the case of proceedings that might be pending in the United Kingdom at the time of the commencement of the Provincial part of the Act, *viz.*, April 1, 1937, the Secretary of State in Council, if he is a party to these proceedings, is to be substituted by the Secretary of State. The provision in relation to the costs, etc., mentioned above-also applies to these proceedings.

Provision
for suits to
be brought
in the
United
Kingdom

Any contract in respect of the Federal or the Provincial revenues made by or on behalf of the Secretary of State after April 1, 1937, may provide that proceedings under that contract shall be brought in the United Kingdom by or against the Secretary of State. Any payment ordered to be made by the Secretary of State is to be paid out of the Federal or the Provincial revenues, as the case may be. Such payments in respect of proceedings by or against the Secretary of State do not impose any liability, whatsoever, upon the Exchequer of the United Kingdom. These provisions do not apply in relation to contracts or liabilities solely in connection with the affairs of Burma or Aden other than those which are made the liabilities of the Federation under this Act, and also to contracts or liabilities for the purpose of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States.†

Savings

* Sec. 176. † Sec. 179.

Contracts in connection with the Crown's Functions in its relations with the Indian States.—Any contract made before April 1, 1937, by or on behalf of the Secretary of State in Council solely in connection with the exercise of the functions of the Crown in its relations with Indian States is deemed to have been made on behalf of His Majesty since that date. Any proceedings in respect of such a contract, which could previously be brought against the Secretary of State in Council can now be brought against the Secretary of State. Similarly the latter becomes a party in the place of the Secretary of State in Council in any proceedings in respect of such a contract pending in the United Kingdom or India. Any contract made after April 1, 1937, on behalf of His Majesty solely in connection with the exercise of the functions of the Crown in its relations with the Indian States are legally enforceable by or against the Secretary of State instead of the Secretary of State in Council. Any sum ordered to be paid by the Secretary of State including costs and expenses in connection with the above-mentioned proceedings are to be considered as sums required for the discharge of the functions of the Crown in its relations with the Indian States. Any sum that might be received by the Secretary of State in connection with these proceedings is to be paid or credited to the Federation.*

Contracts
deemed to
have been
made on
behalf of
His Majesty

The Secre-
tary of State

Sums order-
ed to be
paid

Sums
receive

CHAPTER XIII

THE FEDERAL RAILWAY AUTHORITY

The Transfer of Railways to Ministerial Control ; the Federal Railway Authority ; Qualifications of Members ; Proceedings ; Officers of the Authority ; Powers and Functions of the Authority ; Principles to be observed by the Authority ; The Conduct of Business between the Authority and the Federal Government ; Acquisition and Sale of Land, etc. ; Finance of the Authority ; Rates and Fares ; The Federal Railway Authority and the Federated States ; The Railway Tribunal ; Construction and Reconstruction of Railways ; Arbitration under Contracts ; Railways in Non-Federating States ; Official Directors of Indian Railway Companies ; Establishment of the Authority ; General Remarks.

The Transfer of Railways to Ministerial Control.—The Federal Railway Authority is a new creation of the new Act. The administration of Railways is not a Reserved Department under the Act, but has been transferred to the control of the Federal Government under certain safeguards. It was made clear that—

" Just as in the case of Finance, the constitution of a Reserve Bank, free from political influence in the determination of its policy, especially in the field of currency was made a condition of the transfer of Finance, so the creation of a Statutory Railway Authority, similarly free from political influence for the actual administration of the Railways, was indicated to be necessary before Railways could be transferred to Ministerial control."

Safeguards

Ackworth Committee

Hammond Report

Decision of the Consultative Committee

The Ackworth Committee recommended the separation of Railway finance from general finance and the constitution of the Railway Board into an independent administration. Early in 1932 Brigadier-General Hammond was appointed to study the question. His report was considered by the Government of India and the Consultative Committee of the Round Table Conference at Delhi. It was decided by the majority to recommend for the provision of a Statutory Railway Board for the administration of Railways, though the functions, composition and powers of the Board were to be determined by an Act of the Federal Legislature and not by Parliament in the Constitution Act. It was stated in the White Paper that His Majesty's Government considered it essential that—

" While the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Railway Authority, so composed and with such powers as to ensure that it is in a position to perform its functions upon business principles without being subject to political interference."*

A representative Committee, known as the Railway Board Committee, considered the whole question in London in June, 1933. Its report was examined by the J. P. C. who thought that the scheme outlined by the Committee provided a suitable basis for the administration of the Indian Railways subject to the conditions, that not less than three of the seven members of the proposed Authority shall be appointed by the Governor-General in his discretion, and that the Authority should not be constituted on communal basis. It further recommended :

" The powers which the Governor-General will possess of taking action in virtue of his special responsibilities (including, of course, that relating to any matter which affects the Reserved Departments) must extend to the giving of directions to the Railway Authority. Also his right, in the event of a breakdown of the Constitution, to assume to himself the powers vested in any Federal Authority must extend to the powers vested in the Railway Authority. We have considered the question whether the statutory basis for the new Railway Authority should be provided by the Constitution Act or by Indian legislation. There would be obvious advantages in having in being at the earliest possible date a statutory Railway Authority conforming as closely as possible, both in composition and powers, with the body which will function after the establishment of the Federation, and we see no objection to the necessary steps being taken to this end in India. But even so we are clearly of opinion that the Constitution Act must lay down the governing principles upon which this important piece of administrative machinery should be based, and consequently that the provisions of the first (and any subsequent) Indian enactment on this matter should conform with these principles."†

It also recommended arbitration procedure as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of Railways owned and worked by the Indian States.‡

The actual provisions in respect of the Federal Railway Authority in the Act are based on the report of the Railway Board Committee, supplemented by the suggestions of the J. P. C. Details about the constitution and working of the

The White
Paper Pro-
posal

The Railway
Board
Committee

J. P. C.'s
Recommend-
ations

Arbitration
Procedure

* J. P. C., Para. 392 ; White Paper Introduction, Para. 74.

† J.P.C. Para. 393. ‡ Para. 395.

Actual
Provisions

Authority are given in Part VIII of the Act, supplemented by the Eighth Schedule attached to the Act. It is provided in the Act that no Bill or amendment for supplementing or amending the provisions of this Schedule can be introduced in the Federal Legislature without the previous sanction of the Governor-General given in his discretion.

Composition

The Federal Railway Authority.—The Federal Railway Authority, to be constituted under the Act, shall be a body corporate, consisting of seven members, to be appointed by the Governor-General.* Out of these seven, not less than three are to be appointed by the Governor-General in his discretion. He is also empowered to appoint at his discretion one of these members to be the President of the Authority.†

Terms of the
Members

Of these original members, three are to be appointed for three years, but they are eligible for re-appointment for a further term of three years, or of five years. Other members are to be appointed for five years which is the usual period during which the members hold office. A member of the Authority thus appointed is also eligible for re-appointment for a further term not exceeding five years.‡ The Governor-General, exercising his individual judgment, can make rules to fill in temporary vacancies. He can also terminate the appointment of any member, if he is satisfied that a particular member is for any reason unable or unfit to continue to perform the duties of his office.§

Experience :
Membership
of the
Legislature :
Service of
the Crown

Qualifications for Members.—A person cannot be appointed a member of the Authority unless he is experienced in commerce, industry, agriculture, finance, or administration; or if he is or has been within the last twelve months a member of the Federal or any Provincial Legislature; or has been in the service of the Crown in India or has been a railway official in this country.||

To be
determined
by the
Governor-
General

Salary and Allowances.—The members of the Authority are entitled to receive such salary and allowances as the Governor-General may determine by the exercise of his individual judgment. These emoluments of the members cannot be reduced during their terms of office.||

* Eighth Schedule to the Act, (1). † Sec. 182. ‡ Eighth Schedule (3). § Ibid (4). || Ibid (2). ¶ Ibid (5).

Proceedings. All acts of the Authority are to be carried out and all questions before it are to be decided in accordance with the majority vote of the members present and voting at a meeting of the Authority. In case of a tie, the person presiding over the meeting has a right to a second or casting vote.* If a member of the Authority is in some way interested in any contract in respect of the Railways, he must at once make that clear to the Authority and must not take part in any consideration, discussion or vote on any question with respect to that contract. At any meeting of the Authority a person or persons deputed by the Governor-General for representing him may attend and speak but cannot vote.† Subject to these and other provisions of the Act, the Authority may make standing orders for the regulation of the proceedings and business, and may also change or revoke any such order.‡ It is also provided that the proceedings of the Authority shall not be invalidated on account of any vacancy or by any defect in the appointment or qualifications of any member.§

Casting vote

Members' interest in contracts

The Authority's powers to Standing Orders

The Chief Railway Commissioner

The Financial Commissioner.

Additional Commissioners

Officers of the Authority.—The Governor-General, exercising his individual judgment but after consultation with the Authority, shall appoint a person with experience in railway administration to be the Chief Railway Commissioner.|| This officer will be at the head of the executive staff of the Authority and shall be assisted in the discharge of his duties by a Financial Commissioner, to be appointed by the Governor-General, and some additional Commissioners, who must be persons with experience in railway administration.|| The additional Commissioners are to be appointed by the Authority itself on the recommendation of the Chief Railway Commissioner. The latter cannot be removed from office except by the Authority and that, too, with the approval of the Governor-General, exercising his individual judgment. The Financial Commissioner cannot be removed from office except by the Governor-General, exercising his individual judgment. These officers have the right to attend any meeting of the Authority, while the Financial Commissioner has the right to enquire any matter touching finance to be referred to the Authority.¶

* Eighth Schedule (6); † *Ibid* (7); ‡ *Ibid* (8). § *Ibid* (9);
|| *Ibid* (10); ¶ *Ibid* (11); ¶ *Ibid* (12);

Regulation, construction maintenance, and operation of Railways

Undertakings in connection with Railways

Safeguards

Power of the Federal Government to hold enquiries, etc.

The Authority to act on business principles

Provision for Expenditure

Powers and Functions of the Authority.—The Authority is to exercise the executive authority of the Federation in respect of the regulation, construction, maintenance, and operation of Railways. This authority includes the carrying on of such undertakings in connection with any Federal Railways, which it thinks expedient, and also the making and putting into effect of arrangements with other persons of such undertakings.

The object of this provision is to enable "the Federal Railway Authority to continue to carry on matters ancillary to the actual running of the Railways, as is done at the present time. As an example of this, the Railways may run road services as well as the actual Railways, or they may enter into agreements with other organizations to run road services in connection with other Railways; and in some cases at the present time the Railways work collieries for the purpose of supplying their needs in fuel. The object is to make it clear, that the Federal Railway Authority will have the same power of carrying on operations of that kind."*

In the exercise of these powers, the Authority is subject to any relevant provisions of any Federal, Provincial or existing Indian law and of the law of any Federated State. Moreover the Federal Government is empowered to perform, if it thinks fit, the necessary functions in respect of the construction, equipment, and operation of Railways with the purpose of securing the safety both of the members and public and of persons operating the Railways. Such functions include the holding of inquiries into the causes of accidents by persons, independent of the Authority and of any Railway Administration. The officers of the Federal Government performing these functions are not subject to the powers vested in the Authority in relation with the Railway Services of the Federation.†

Principles to be observed by the Authority.—The Authority is enjoined, while discharging its functions, to act on business principles, paying proper regard to the interests of agriculture, industry, commerce, and the general public. In particular, it must make proper provision for meeting out of their receipts on revenue account all expenditure to which such receipts are applicable. The Authority in the discharge of its functions is to be guided by such instructions on questions of *policy*, as may be given to it by the Federal Government. If there is any dispute whether a particular question is or is not a question of policy, the decision

* Parliamentary Debates. † Sec. 181.

of the Governor-General given in his discretion is to be final.* The Federal Government is also enjoined to discharge its functions with respect to Railways on business principles paying due regard to the interests of agriculture, industry, commerce, and the general public. This provision, however, does not limit the powers of the Governor-General in respect of his Responsibilities and to his duty as regards certain matters to exercise his function in his discretion or by the exercise of his individual judgment. These powers apply regarding matters entrusted to the Authority as if the executive authority of the Federation in regard to those matters were vested in him, and as if the functions of the Authority in respect of those matters were the functions of the Federal Ministers. He is authorized to issue to the Authority necessary directions regarding any matter involving any of his Special Responsibilities, or any matter regarding which he is required to act in his discretion or by the exercise of his individual judgment. The Authority must obey any such directions.†

The Conduct of Business between the Authority and the Federal Government.—The Governor-General, exercising his individual judgment, but after consultation with the Authority, may make rules for the more convenient transaction of business arising out of the relations between the Federal Government and the Railway Authority. These rules must make provision for requiring the Authority to send to the Federal Government information regarding such business as may be specified in the rules, or as the Governor-General may otherwise require it to do so; and also for requiring the Authority and the Chief Executive Officer to bring to the notice of the Governor-General any matter under their consideration which might involve any of the Special Responsibilities of the Governor-General.‡

Acquisition and Sale of Land, etc.—Except in such classes of cases as may be specified in the regulations to be made by the Federal Government, the Authority cannot acquire or dispose of any land. When it is necessary for it to acquire compulsorily any land for the due discharge of its functions, the Federal Government shall cause that land to be

Instructions
by the Fed-
eral Govern-
ment on
questions of
policy

The Federal
Government
should also
perform its
functions on
business
principles

Special
powers of the
Governor-
General also
apply here

Rules of
business

Special
Respon-
sibili-
ties of the
Governor-
General

The Auth-
ority cannot
acquire or
dispose of
land

* Sec. 183. † Sec. 183 (3 & 4). ‡ Sec. 184.

Land to be acquired through Federal Government

acquired on behalf of and at the expense of the Authority. Contracts made by or on behalf of the Authority are enforceable by or against the Authority and not by or against the Federation. The Authority may sue or be sued in the same way as a Railway Company. This is subject to any provision which may be made hereafter by an Act of the Federal Legislature. This provision regarding contracts does not apply in relation to any contract which is supplemental to a contract made before the constitution of the Authority. Such a contract may be enforced in the same way as the principal contract. The Authority can also make working agreements and carry out working agreements made with any Indian State, or person owning or operating any Railway in India, or in the territories adjacent to India regarding the persons by whom and the terms on which any of the Railways in question are to be operated.*

The Railway Fund

Finance of the Authority.—The Authority shall establish, maintain and control a fund to be known as the Railway Fund. All moneys received in the discharge of its functions by the Authority, whether on revenue account or on capital account or out of the Federal Revenues, must be paid into that Fund. And all expenditure, whether on revenue account or on capital account, required for the discharge of its functions by the Authority shall be met out of that Fund. But the Authority can establish and maintain separate provident funds for the benefit of persons who are or have been employed in connection with the Railways.

The Provident Funds

Expenditure of the Authority

The income of the Authority on revenue account in any financial year is to be applied in meeting working expenses, payments due under contracts or agreements to Railway undertakings, paying pensions and contributions to provident funds, repaying to the revenues of the Federation so much of any pension and contributions to provident funds, charged by this Act on those revenues, as is attributable to service on Railways in India, making due provision for maintenance, renewals, improvements and depreciation, making to the Federal Revenues any payments as interest which it is required to pay under the Act, and defraying other expenses properly chargeable against revenue in that year.

Any surpluses on revenue account in the accounts of the Authority are to be divided between the Federation and the Authority in accordance with a scheme to be prepared by the Federal Government. This scheme can be reviewed from time to time. Until such a scheme has been prepared, distribution will be done in accordance with the principles which, before the establishment of the Authority, regulated the application of surpluses in Railway accounts. Any sum apportioned to the Federation in this way is to be transferred to it and shall form part of the Federal revenues. The Federation may provide any sum of money on revenue account or capital account for the purposes of the Railway Authority. Such a sum is to be considered to be expenditure and is to be shown as such in the estimates of expenditure laid before the Federal Legislature.*

Division of Surpluses between the Authority and the Federation

The Authority shall be deemed to be owing to the Federation any sum that may be agreed or, in the absence of agreement, determined by the Governor-General in his discretion, to be equivalent to the amount of moneys provided either before or after the passing of the Act out of the revenues of India or the Federal revenues for capital purposes in connection with Railways in India, exclusive of Burma. The Authority shall pay out of their income on revenue account to the Federation interest on that amount at the rate that may be agreed or determined in the way mentioned above, and also make payments in reduction of the principal of that amount in accordance with a repayment scheme to be so agreed or determined. The Authority can also make payments to the Federation in reduction of the principal of any such amount out of moneys other than receipts on revenue account. It is also provided that where the Secretary of State in Council has assumed or incurred any obligation in connection with any such Railways, he shall be deemed to have provided for the purposes mentioned above an amount equal to the capital value of that obligation as shown in the accounts of the Government of India before the Authority is established.

Debt of the Railway Authority to the Federation

Payment of interest and capital

Obligation of the Secretary of State

The Authority must repay to the Federation any sums defrayed out of the Federal revenues in respect of any debt, damages, costs or expenses in connection

Payment in respect of debt, damages, costs or expenses

Expenses of the Railway Police Forces

Investment of surplus money

Money held by the Governor-General

The Reserve Bank of India to act as the banker of the Authority

with any proceedings against the Federation or the Secretary of State in respect of Railways in India. The Authority is also required to pay to any Province or Indian State sums of money to cover the expenses incurred by it for providing a Police Force required for the maintenance of order on the premises of the Federal Railways. Any question in respect of the amount of any such expenses between the Authority and a Province or a State is to be determined by the Governor-General in his discretion.*

Subject to the conditions that may be prescribed by the Federal Government, the Authority can invest moneys in the Railway Fund or any provident fund which are not required for the time being to meet expenses, and may also transfer and realize investments made by them.† The Authority is not entitled by any of the above-mentioned provisions to require that any sum of money held by the Governor-General in Council before the establishment of Authority on account of any railway depreciation fund, reserve fund or provident fund shall be transferred to the Authority for investment by it. It may, however, require from time to time the transfer to themselves of as much of any of the above-mentioned funds as may be required to meet expenditure chargeable to any of those funds. In such a case the Federal Government shall credit each such fund with interest on the untransferred balance of that fund at a rate agreed upon or determined by the Governor-General in his discretion. The part of any such fund attributable to the Railways of Burma is excluded from the funds to which the above-mentioned provision applies.‡

The Authority is required to entrust all their money, that is not immediately needed, to the Reserve Bank of India, and also to employ it as its agent for all transactions in India relating to remittances, exchange and banking. The Bank is to perform these functions on the same terms and conditions upon which it performs similar functions for the Federal Government.§ The income, profits or gains of the Authority are not subject to Indian income-tax or supertax.||

* Sec. 187. † Sec. 188. ‡ Sec. 189. § Eighth Schedule, 16.
|| Ibid, 15.

The accounts of the receipts and expenditure of the Authority must be audited and certified by or on behalf of the Auditor-General of India. A report of the Authority's operations in the preceding year and a statement of accounts in a form approved by the Auditor-General must be published annually by the Authority.*

Accounts of the Authority to be audited by the Auditor-General Annual Reports

Rates and Fares.—In order to advise the Authority in connection with any dispute between persons using, or desiring to use a Railway and the Authority in respect of rates or traffic facilities, a Railway Rates Committee may from time to time be appointed by the Governor-General.† It is further provided that a Bill or amendment making provision for regulating the rates or fares to be charged on any Railway cannot be introduced or moved in the Federal Legislature except on the recommendation of the Governor-General.‡

The Railway Rates Committee

The Federal Railway Authority and the Federated States.—The Federal Railway Authority and the Federated States must exercise their powers in respect of Railways with which they are concerned in a way so as to afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from those railways, including through traffic at through rates. Unfair discrimination by the granting of undue preferences or otherwise, and unfair or uneconomic competition between the different Railway Systems must also be avoided.§

Affording of mutual traffic facilities

Any complaint by the Authority against a Federated State or *vice versa* on the ground that the above-mentioned provisions have not been complied with is to be made to and determined by the Railway Tribunal.|| It shall also determine any complaint made by a Federated State that a direction in relation to interchange of traffic or maximum or minimum rates and fares or station or service terminal charges, given to it by the Authority discriminates unfairly against the Railways of the State or imposes on the State an obligation to afford facilities which are not reasonable.||

Discriminatory Treatment forbidden

The Railway Tribunal.—The Railway Tribunal, is to consist of a President and two other persons. They are to be selected to act as such as in each case by

Complaints to be made to the Railway Tribunal

Composition

* Sec. 190. † Sec. 191. ‡ Sec. 192. § Sec. 193. (1)
|| Sec. 193, (2). ¶ Sec. 194.

**Members
and the
President**

Governor-General in his discretion from a panel of eight persons appointed by him in his discretion. These persons must possess railway administrative, or business experience. The President of the Tribunal must be one of the Judges of the Federal Court as may be appointed for the purpose by the Governor-General in his discretion after consulting the Chief Justice of India. He shall hold office for at least five years as may be specified in the appointment. He shall be eligible for re-appointment for another period of five years or any less period. But if the President of the Tribunal ceases to be a Judge of the Federal Court, he shall cease to be the President of the Tribunal. If he is unable to act as such temporarily for any reason, the Governor-General is authorised to appoint another Judge of the Federal Court to act for the time being in his place, after due consultation of the Chief Justice of India.

The President may with the approval of the Governor-General given in his discretion make rules regulating the practice and procedure of the Tribunal, and also the fees to be taken in the proceedings before it.

**The power
of making
rules**

**Urisdiction
of the
Tribunal**

The Railway Tribunal shall exercise the jurisdiction as is conferred upon it by this Act. It may make for that purpose the necessary orders including interim orders, orders varying or discharging a direction or order of the Authority, orders for the payment of compensation or damages and costs, and orders for the production of documents, and the attendance of witnesses. These orders must be obeyed by the Authority and every Federated State, and every other person or authority affected by those orders.

**The power to
issue orders**

An appeal can be taken to the Federal Court against the decision of the Railway Tribunal on a question of law, but the decision of the Federal Court on such an appeal is final. The Railway Tribunal or the Federal Court can, on an application made to them for the purpose, change or revoke any order previously made by them. Subject to the power of hearing appeals by the Federal Court against the decisions of the Railway Tribunal, as described above, the jurisdiction of the Railway Tribunal is exclusive. The members of the Railway Tribunal, other than the President, shall receive such remuneration as may be determined by the Governor-General in his discretion. This, as

**Appeal to the
Federal
Court**

**Exclusive
Jurisdiction**

well as other administrative expenses of the Tribunal, shall be paid and charged on the Federal revenues, of which any fees, etc., taken by the Tribunal shall form part. The Governor-General is to exercise his individual judgment regarding the amount to be included in respect of the administrative expenses of the Railway Tribunal in any estimate of expenditure to be laid before the Federal Legislature.*

Construction and Reconstruction of the Railways.—

The Governor-General, exercising his discretion, shall make rules requiring the Authority and any Federated State to give notice in the cases prescribed by the rules, of any proposal for constructing a Railway, or for altering the alignment or gauge of a Railway, and for depositing plans. These rules are also to contain provisions enabling the Authority or a Federated State to lodge objections on the ground that the carrying out of the proposal will result in unfair or uneconomic competition with a Federal Railway or a State Railway, as the case may be. If such an objection is not withdrawn within the prescribed time, the Governor-General shall refer to the Railway Tribunal the question whether the particular proposal should be put into practice as it is or as modified with the approval of the Tribunal. The original proposal shall not be acted upon except in accordance with the decision of the Tribunal. This provision, however, does not apply to any case where the Governor-General in his discretion certifies that for reasons of defence such proposal should or should not be put into force.†

Arbitration under Contracts.—In respect of any Railway Company operating a Railway in British India before April 1st, 1937, it is provided that if a dispute arises under a contract between such a Railway Company and the Authority or the Federal Government, and the dispute is of such a nature that under the contract the Company could, but for this Act, submit to arbitration, the dispute shall be deemed to have arisen between the Company and the Secretary of State, who shall be substituted in respect of the contract for the Secretary of State in Council. Any award made in such an arbitration or any settlement of the dispute which is agreed to by the Secretary of State, with the concurrence of his

Remuneration of the Members and the President

Administrative expenses of the Tribunal

Rules in respect of constructing or re-constructing a Railway

Provisions for lodging objections

Reference to the Railway Tribunal

Provision for the needs of defence

Disputes between a Railway Company and the Authority or the Federal Government

* Sec. 196. † Sec. 195.

Charged on
Federal
revenues

Advisers, is binding on the Federal Government and the Authority. Any such sum for which the Secretary of State may become liable for payment and any costs incurred by him in connection with this particular matter are to be paid from, and charged on, the Federal revenues. Such sums, however, shall be considered a debt due to the Federation from the Authority.*

Functions
may be
entrusted
to the
Authority

Railways in Non-Federating States.—The Authority shall undertake the performance of those functions, which may be entrusted to it in relation to Railways in any Indian State, which has not acceded to the Federation, by His Majesty's Representative for the exercise of the functions of the Crown in its relation with Indian States.†

Appoint-
ments to be
made by the
Governor-
General

Official Directors of Indian Railway Companies.—The powers of the Secretary of State in Council regarding the appointment of Directors and Deputy-Directors of Indian Railway Companies shall be exercised by the Governor-General acting in his discretion after consultation with the Authority.‡

Effect of the
proposals

Establishment of the Authority.—It is provided in the Transitional Provisions that the Federal Railway Authority can be established even before the establishment of the Federation.

General Remarks.—The effect of these provisions is that an independent Railway Authority will take the place of the present Railway Board. It will control the railway executive and the general working of the Railways in the country subject to the control of the Federal Government as regards policy. The Railway Budget will not be submitted to the Federal Legislature but shall be audited by the Auditor General of India.

The Railway Authority is being established for the first time in India. It is said that its institution is necessitated by the need to protect the management of the Railways from undue political influence and pressure.

Reasons for
the establish-
ment of the
Authority

"The greatest danger to the system consists in the manipulation of its enormous resources of men and material by a political party intent on introducing the spoils system and making it an instrument of party policies.'

* Sec. 197. † Sec. 198 ‡ Sec. 199.

Moreover, Railways, being public utility concerns run by the taxpayers' money, must be run strictly on economic lines and business principles. Lastly the vast foreign capital invested in the Indian Railways must be protected so as to assure the foreign bond-holders as to the safety of their investment. The experience of other British Dominions, notably Canada, Australia, and the Union of South Africa, also points to the same direction.

In India, however, the proposal for the establishment of the Railway Authority has not been well received. Probably there is no opposition to it in principle, as the Indian Legislative Assembly carried a motion in February, 1934, to the effect that the Constitution Act should merely contain a clause requiring the establishment of a Statutory Railway Authority, and that its constitution, functions and powers shall be subject to legislation, initial as well as amending, by the Indian Central Legislature. This has not been accepted as the complete constitution of the Authority is given in the Act. And objection is certainly taken to the various provisions by which the control of the Federal Ministers is almost completely eliminated, while no provision has been made for economy and retrenchment in the Railway administration, and for rationalization and nationalization, of the Railway.

The whole scheme of the Federal Railway Authority, as it stands, seems to create the impression that it is meant to safeguard the huge foreign investment in the capital outlay of the Railways and the vested rights of the Europeans and the Anglo-Indians to favoured treatment in respect of Railway services and other rights regarding railway traffic, etc. It will have the effect of keeping the great national enterprise of the Railways with its economic, financial and strategic importance beyond the control of the popular Ministers. Lastly in as much as—

"it is obviously a creation of distrust of the democratic principle in government, or of the Indian politician come into power, its object as well as nature must meet with the strongest criticism."*

Much, however, will depend upon how it is constituted and how it actually works.

Not well-received in India

Elimination of the control of the Federal Ministers

Distrust of the democratic principle

* Shah, K. T. : Federal Structure, p. 500.

CHAPTER XIV

THE FEDERAL JUDICIARY

Need for a Federal Court; the Federal Court of India; the Judges of the Federal Court; Functions of the Federal Court; Form of Judgment on Appeal; Enforcement of Decrees and Orders of Federal Court and Orders as to Discovery, etc. Law declared by the Federal Court and the Privy Council; Power to make Rules; Expenses of the Federal Court; The High Courts in the States; Appeals to His Majesty in Council; the Working of the Court.

Need for a Federal Court.—A Federal Constitution cannot function well in the absence of an independent and impartial Federal Judiciary. Such a Constitution postulates a sort of mutual agreement between the Centre and the federating units regarding the distribution powers. This gives rise to differences of opinion regarding the interpretation of the agreement embodied in the Constitution and to disputes regarding the exercise of their respective rights by the units and the Federal Centre. These can only be decided by an independent judicial tribunal beyond the influence of the highest executive authority in the country, which may itself be a party to a dispute. Sir Shafaat Ahmad Khan observes:

Functions of the Federal Court

"A Federal Court is needed not merely to maintain the delicate poise of the Constitution. It is intended to guard it against encroachments on the liberty of the individual and rights of citizens by the Executive no less than by the Legislature. It will be an effective check on the tendency of the Federal Executive to usurp the function of other organs of the Federal Government."*

This is amply borne out by experience, particularly by the work and achievement of the Supreme Court of the United States of America. All this was realized by the J. P. C., which wrote in its Report:

Interpreter and Guardian of the Constitution

"A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the constituent units of the Federation."

Establishment and constitution of the Federal Court

The Federal Court of India.—Provision is made in the Act for a Federal Court, consisting of a Chief Justice of India and such number of other Judges as His Majesty may deem necessary. It is, however,

* "The Indian Federation" page 230.

laid down that until and unless an address has been presented by the Federal Legislature to the Governor-General for submission to His Majesty requesting for an increase in the number of Judges, the number of puisne Judges can not be more than six.*

Judges of the Federal Court can be appointed by His Majesty by warrant under the Royal Sign Manual. They hold office till they are sixty-five, though they may resign their office earlier. They can be removed from office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour, or of infirmity of mind or body, if the Judicial Committee of the Privy Council, on reference being made to them by His Majesty, report to that effect. Thus it is clear that the powers of the appointment and removal of the Judges are vested with the Crown, which in actual practice will mean the Secretary of State for India—an outside authority responsible to the British Parliament. The Judges, moreover, hold office during *good behaviour* and not during *the pleasure* of the Executive. This is certainly a welcome change and along with the above-mentioned provisions is likely to foster a sense of independence in the Judges which is absolutely essential if the Court is to command confidence. Objection has, however, been taken to the appointment of the Judges by an outside authority.

Appointment of the Judges

Tenure

Independence of the Judges

"The appointment of the highest judicial officers in the hands of the British King,—i.e., in the hands of the Secretary of State, and, through him, of the alien Indian Bureaucracy,—is in itself an objectionable feature of the Constitution. So long as the Judges owe their allegiance, primarily and obviously, to an outside authority unconsciously biased in favour of the existing order, they cannot but—quite unconsciously, perhaps—lean in favour with the class or the power that gives them their place, and their importance in the scheme of life Hence the supposed attribute of impartiality induced or encouraged by this method of appointing Judges to the highest tribunal in India would fail to accomplish the object in view; while there is at least an equal danger of its promoting something quite the reverse."†

Appointment and Removal by Outside Authority

As far as the removal of the Judges is concerned, it is also suggested that such a power ought to have been left to the local authorities—the Governor-General and the Governors in their respective spheres, on an address by the Legislatures as is the case in Britain. This would have equally well kept the Judges out of party politics.

* Sec. 200. † K. T. Shah: *Federal Structure*, p. 389.

Maximum Strength

Minimum Working Strength

Qualifications for appointment as Judges of the Federal Court

Additional Qualifications for the Chief Justice

J. P. C.'s views

The Judges of the Federal Court.—The maximum number of Judges for the Federal Court, as has been stated above, can be six *puisne* Judges in addition to the Chief Justice of India.* But the rules for practice and procedure of the Court are to provide that the minimum number of Judges who are to sit for any purpose is three.† Thus the actual number of Judges of the Federal Court, that has been constituted, is three, including the Chief Justice.

Qualifications for a Judge of the Federal Court, as provided in the Act,‡ include holding for at last five years of the office of a Judge of a High Court in British India or in a Federated State, or being a barrister of England or Northern Ireland of at least *ten years* standing, or a member of the Faculty of Advocates in Scotland of at least *ten years* standing, or being for at least ten years a pleader of a High Court in British India or in a Federated State or of two or more such Courts in succession. In the case of the Chief Justice of India, it is provided in addition that he is, or when first appointed to judicial office was, a barrister, a member of the Faculty of Advocates or a pleader and instead of at least ten years standing, his standing as a barrister or a pleader under the above-mentioned conditions should be of at least fifteen years. In computing this standing, both in the case of a Judge of the Federal Court and the Chief Justice, any period during which a person has held judicial office after he became a barrister, a member of the Faculty of Advocates or a pleader, as the case may be, is to be included. The Judges, before they enter upon the duties of their office, are to make and subscribe before the Governor-General or some person appointed by him an oath according to the form set out for the purpose in the Fourth Schedule to the Act. Regarding the qualifications of the Judges, the J. P. C. observed :

“ We concur generally with the qualifications proposed for the Judges, but we doubt whether in principle any distinction ought to be drawn in the Constitution Act between judges, advocates and pleaders of State Courts and those of the High Courts, though this does not of course mean that any obligation would be imposed upon the Crown to appoint a Judge who had not all the necessary professional qualifications. We assume that the White Paper proposals mean throughout by “ State Court,” the Court of highest jurisdiction in the State.”§

* Sec. 200. † Sec. 214 (2). ‡ Sec. 200 (3). § Para 323.

It will be noticed that only professional lawyers can be directly appointed Judges of the Federal Court, though there is no bar against a civilian Judge of a Provincial High Court being appointed a Judge of the Federal Court provided he is otherwise qualified for that office.

The Judges of the Federal Court are entitled to such salaries and allowances for expenses regarding equipment and travelling upon appointment, and to such rights regarding leave and pensions, as may from time to time be fixed by His Majesty in Council, but the salary or rights in respect of leave of absence or pension of a Judge cannot be varied to his disadvantage after his appointment.* By the relevant Order in Council issued on the 18th day of December, 1936, it was provided for the functioning of the Federal Court from 1st October, 1937. Under the authority of this Order in Council,† the Judges in respect of time spent on actual service receive Rs. 5,500 per month as salary while the Chief Justice receives Rs. 7,000 per month as salary. Regarding pension, it is provided that there shall be payable to the Chief Justice on his retirement on attaining the age of sixty-five, or on his retirement at an earlier date, either after completing not less than twelve years' actual service, or on grounds approved by the Secretary of State, a pension at the rate of seventy-five pounds per annum in respect of each period of six months' service for pension provided that if his total service for pension is less than six months, or is six months or more but less than twelve months, he shall be deemed for the purposes of this paragraph to have in the first case six, and in the second case twelve months' service for pension. The pension, however, cannot exceed two thousand pounds per annum in any case. If the Chief Justice dies within one year from the date of his retirement, his legal personal representative shall receive by way of gratuity the sum, if any, by which the aggregate of any amounts paid or due to him whether from the revenues of the Federation or from the Exchequer in respect of pension (including any gratuity payable on retirement) falls short of three thousand pounds.

Provision is made for the temporary appointment of the Acting Chief Justice. One of the other Judges of the Court, selected by the Governor-General in his

The salaries
of the
Judges of
the Federal
Court

Rules in
respect of
pension

* Sec. 201.

† The Government of India (Federal Court) Order, 4, 5, 6.

Temporary appointment of Acting Chief Justice

Seat of the Court

The Original Jurisdiction of the Federal Court

Constitutional Questions and Dispute involving legal right

Jurisdiction in respect of Indian States

discretion for the purpose, will perform the duties of the office of the Chief Justice, if that office becomes vacant or if the Chief Justice is, by reason of absence or for any other reason, unable to perform the duties of his office, until some person appointed by His Majesty assumes charge of the office.* No provision, however, is made in the Act for temporary appointment of other Judges.

The Federal Court is a court of record and sits in Delhi,—the capital of India, but it can sit at such other place or places, if any, as the Chief Justice of India may, with the approval of the Governor-General, from time to time appoint.†

Functions of the Federal Court.—The Federal Court must function as the guardian and interpreter of the Constitution. It must decide disputes among the units, and between the units and the Federal Centre. It may be vested with the powers of a Supreme Court of Appeal for the whole country. Lastly, it can act in an advisory capacity as far as the interpretation of the Constitution Act is concerned. The Federal Court of India has been vested with some of these powers and will discharge some of these functions. For this purpose it is vested with both Original and Appellate jurisdiction. The Governor-General can also consult the Court on any point he likes. The Court may function as the Supreme Court for British India only if its jurisdiction is enlarged in that direction by an Act of the Federal Legislature.

Its original jurisdiction,‡ to the exclusion of any other court, extends to disputes between the Federation, any of the Provinces or any of the Federated States, if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. This means that the jurisdiction is not confined to constitutional questions only, but also extends to disputes involving legal rights. It is not identical with a mere authoritative interpretation of the Constitution as the Supreme Court does in the United States, or as the Privy Council does for any British Dominion or Colony. The Federal Court in the exercise of its original jurisdiction can pronounce only a declaratory judgment. In the case of a dispute where a State is a party, the original jurisdiction of the Court does

* Sec. 202. † Sec. 203. ‡ Sec. 204.

not extend unless the dispute concerns the interpretation of this Act or of an Order in Council, or the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State—or a dispute arising under an agreement made under Part VI of this Act in relation to the administration in that State of a law of the Federal Legislature, or otherwise concerns some matter with respect to which the Federal Legislature has power to make laws for that State—or a dispute arising under an agreement made after the establishment of the Federation, with the approval of His Majesty's Representative for the exercise of the functions of the Crown in its relations with Indian States, between the State and the Federation or a Province, being an agreement which expressly provides that the said jurisdiction shall extend to such a dispute—or a dispute arising under an agreement which expressly provides that the said jurisdiction shall not extend to such a dispute. This difference between the original jurisdiction of the Court regarding British Indian Provinces and the Federated States is due to the difference in their status and the conditions on which the States may accede to the Federation.

The J.P.C. observed : " This jurisdiction is to be an exclusive one, and in our opinion rightly so since it would be altogether inappropriate if proceeding could be taken by one Unit of the Federation against another in the Court of either of them. For that reason we think that, where the parties are Units of the Federation or the Federation itself, the jurisdiction ought to include not only the interpretation of the Constitution Act, but also the interpretation of federal laws, by which we mean any laws enacted by the Federal Legislature."*

J.P.C.'s
Observation

The appellate jurisdiction of the Federal Court extends to the hearing of appeals against any judgment, decree or final order of a High Court in *British India*, if the High Court involved gives a certificate to the effect that the case involves a substantial question of law as to the interpretation of this Act or any Order in Council made thereunder. When such a certificate is given, any party to the case may take an appeal to the Federal Court on the ground that the question involved has been wrongly

Appellate
Jurisdiction
of the
Federal
Court

* Para 324.

No Appeal to
His Majesty
in Council

decided, or any ground on which that party could have appealed without special leave to His Majesty in Council if no such certificate had been given by the High Court, and on any other ground with the leave of the Federal Court. In these cases no direct appeal lies to His Majesty in Council either with or without special leave.

The Supreme
Court of
Appeal for
India

These provisions give a fairly wide margin of appeal to the Federal Court, though appeals against the decisions of the High Courts, can be entertained only under certain conditions. A strong body of opinion in British India has always advocated a Supreme Court of Appeal for India. It was, therefore, urged on behalf of this section that the Federal Court should be vested with further jurisdiction, and the Court should sit in two divisions, one dealing with Federal matters and the other with appeals against the decisions of the High Courts. The proposal was opposed by the representatives of the States as well as by some British Indian delegates. "Sir Nripendra Sircar stated that the cost of such a Court would be prohibitive, for any right of appeal to the Supreme Court, even in the limited criminal field of capital cases, would be largely availed of, and some twenty to twenty-five judges would be necessary to deal with the work." He also pointed out that by this method it was not possible to escape eventually from the jurisdiction of the Privy Council as it was a prerogative court. The White Paper proposed to provide for the Supreme Court of Appeal for British India in civil cases and in criminal cases involving capital sentences, provided there was no appeal to the Federal Court, by an Act of the Federal Legislature, introduced with the previous sanction of the Governor-General given at his discretion. Regarding this proposal the J.P.C. observed :

J. P. C's
Recommen-
dations

The Court would in effect take the place of the Privy Council, though an appeal would still lie to the latter by leave of the Supreme Court or by special leave of His Majesty. We have given very careful consideration to this proposal, but we do not feel able to recommend its adoption. A Supreme Court of this kind would be independent of and in no sense subordinate to, the Federal Court ; but it would be impossible to avoid a certain overlapping of jurisdiction, owing to the difficulty of determining in particular cases whether or not a constitutional issue was raised by a case under appeal. This might involve the two Courts in undignified and very undesirable disputes, and we are satisfied that the existence of two such courts of co-ordinate jurisdiction would be to the advantage neither of the

Courts themselves nor of the Federation. There is much to be said for the establishment of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal court, and we think that the Legislature should be empowered to confer this extended jurisdiction on it."*

The Committee assumed that after this is done,

" the Court would sit in two Chambers, the first dealing with federal cases, and the second with British India appeals. The two Chambers would remain distinct, though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable." *

At the same time the Committee did not think proper to recommend a Court of Criminal Appeal for India, as it thought that the rights of a condemned man seemed to be very fully safeguarded, and that no good purpose would be served by adding yet another Court to which appeals could be brought.†

Thus it is provided‡ in the Act that the Federal Legislature may provide by an Act of its own that in such civil cases as may be specified in the Act, an appeal shall lie to the Federal Court from a judgment, decree or final order of a High Court in British India without any certificate as mentioned above. There shall, however, be no appeal under this Act unless the amount involved in dispute is not less than fifty thousand rupees or such other sum not less than fifteen thousand rupees as may be specified by the Act—or that the judgment, decree or final order involves property of the same amount or value—or the Federal Court gives special leave to appeal. If such an Act is passed by the Federal Legislature, direct appeals in civil cases from High Courts in British India to His Majesty in Council, either with or without special leave, may also be abolished wholly or partially by an Act of the same Legislature. But a Bill or amendment for any of these purposes cannot be moved in the Legislature without the previous sanction of the Governor-General in his discretion.

Regarding appeals against the decisions of a High Court in a Federated State, it is provided§ that appeals in such cases are permissible when it is alleged that a question of law concerning the interpretation of this Act or of an Order in Council has been wrongly

No Supreme
Court of
Criminal
Appeal for
India

Power of the
Federal
Legislature
to enlarge
appellate
jurisdiction
of the Fed-
eral Court

Appellate
Jurisdiction
of Federal
Court in
appeals from
High Courts
in Federated
States

* Para 329. † Para 330. ‡ Sec. 206. § Sec. 207.

decided, or on the ground of the extent of the legislative or executive authority vested in the Federation by virtue of the Instrument of Accession of that State, or concerning an agreement made in relation to the administration in that State of a law of the Federal Legislature. Appeal in such cases is to be by way of special case to be stated for the opinion of the Federal Court by the High Court. The Federal Court may require the High Court in the Federated State to state a case and may return a case so stated in order that further facts may be stated. When the Federal Court requires this to be done, or orders a stay of execution, or requires the aid of the civil or judicial authorities in a Federated State, it shall cause letters of request for the purpose to be sent to the Ruler of the State who shall communicate it to the High Court or to the required judicial or civil authority.*

Letters of Request to the Federated States

Power of the Governor-General to consult the Federal Court

In addition to the exercise of its original and the appellate jurisdiction, the Federal Court is expected to function in an advisory capacity for the interpretation of the Constitution. When the Governor-General thinks that a question of law has arisen or is likely to arise of a nature and importance that it is expedient to secure the opinion of the Federal Court on it, he may refer it in his discretion to the Court for consideration and report to the Governor-General. Such a report shall be made in the open Court only in accordance with the opinion of the majority of the Judges present at the hearing of the case, but a dissenting Judge can deliver a separate opinion.†

This power possessed by the Federal Court is analogous to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833. It is an important provision as it will enable the Governor-General and through him others to seek the opinion of the Federal Court regarding the legality or otherwise of certain questions that may arise. The decisions of the Court may have the effect of 'relegating exceedingly delicate and inflammable issues, which may sweep, like prairie fire over the torrid plains of India, to the dry atmosphere of judicial calm,' though the Governor-General or for the matter of that any other executive authority cannot be allowed to shift

his responsibility to the Federal Court. Moreover if the legality of a particular question is tested before giving effect to it, many a pitfall can be avoided, and huge waste of energy, time and money involved in passing a law which is declared *ultra vires* of the Constitution subsequently, is saved. It should, however, be noticed that it is only the Governor-General who can make a reference to the Court for the purpose. No other person or authority can do so, which means that the Provinces cannot on their own account refer questions for report to the Federal Court. But probably the Provinces can refer a particular question to the Governor-General for securing the opinion of the Federal Court and he may, at his discretion, do so. Lastly, the Federal Court can only *report* its opinion. This *report* is to be distinguished from the *judgment* which must be binding on all concerned. Nothing is said in the Act whether this *report* is binding on the Governor-General. Again it is very difficult to answer the question whether such an expression of opinion on a particular question precludes the Federal Court from reversing its own opinion when a specific case involving the same question is brought before it and some material is placed before the Court for consideration.

The Act empowers* the Federal Legislature to make provision by an Act of its own to confer on the Federal Court supplemental powers, which are not inconsistent with the provisions of the Act, which may be necessary to enable the Federal Court to exercise its jurisdiction more effectively. Under this provision the Central Legislative Assembly has passed an Act empowering the Federal Court to make rules for regulating the service of processes issued by the Court, including rules requiring a High Court from which an appeal has been preferred to the Federal Court, to serve any process issued by the latter in connection with that appeal. On the other hand the Federal Legislature has no power to confer any right of appeal to the Federal Court against the decision of a High Court in British India in a case where the latter is exercising jurisdiction on appeal from a Court outside British India, and to affect any right of appeal in such cases to His Majesty in Council with or without appeal.†

Only the Governor-General has this Power

Is the Report binding?

Ancillary Powers of the Federal Court

* Sec. 215. † Sec. 218.

Orders to be given effect

Form of Judgment on Appeal.—The case where the appeal has been allowed by the Federal Court shall be remitted by it to the Court against whose decision the appeal was made with its orders, decree or judgment, and the latter shall give effect to it. The orders regarding costs of a case in the Federal Court and regarding a stay of execution in a case under appeal to the Federal Court pending the hearing of the appeal, shall be transmitted to the court against whose decision the appeal has been made, and shall be given effect by the latter.*

Civil and Judicial authorities to act in aid of the Federal Court

Enforcement of Decrees and Orders of Federal Court and Orders as to Discovery, etc.—The authority of the Federal Court has been given legal backing by the provision that all authorities, civil and judicial, throughout the Federation must act† in aid of the Federal Court. The latter has power regarding the area covered by the Federation to pass orders securing the attendance of persons, the discovery or production of documents, or the investigation or punishment of any contempt of court. These and other connected orders must be enforced by all courts and authorities in every part of British India or of any Federated State as the orders of the highest Court having jurisdiction over them.‡ These powers, however, do not apply to the Federated States in respect of the cases arising under the additional appellate jurisdiction if it is conferred on the Federal Court under the provisions of the Act. The authority of the Federal Court regarding the Federated States cannot be exercised directly, but will be exercised through "Letters of Request" to the Rulers of the States as has been described above.

Binding on all Courts

Law declared by the Federal Court and the Privy Council.—The law declared by the Federal Court and by any judgment of the Privy Council is binding on all courts in British India, and in any Federated State if it concerns the application and interpretation of this Act or an Order in Council or any matter in respect of which the Federal Legislature has power to make laws.†

Power to make Rules.—The Act empowers|| the Federal Court to make rules from time to time with the approval of the Governor-General in his discretion for regulating the practice and procedure of the

* Sec. 209. † Sec. 210. ‡ Sec. 212. || Sec. 214.

Court, including rules in respect of persons practising before the Court, the time for the admission of appeals, costs and fees, and for the summary trial of appeals which may appear to the Court to be frivolous or vexations or brought for the purpose of delay. Rules thus made may also fix the number of Judges competent to sit for any purpose, but no case can be decided by less than three Judges. If the appellate jurisdiction of the Federal Court is enlarged by the Federal Legislature as mentioned above, the rules made must provide for the constitution of a special division of the Court for hearing cases which would have been within the jurisdiction of the Court even if the jurisdiction had not been enlarged. Subject to the rules of the Court, the Chief Justice of India is empowered to decide what Judges are to constitute any division of the court and what Judges are to sit for any purpose. Judgments of the Court must be delivered in the open Court with the concurrence of a majority of the Judges present at the hearing of the case, but a Judge who differs with the opinion of the majority may deliver a dissenting judgment. All proceedings in the Federal Court must be carried on in the English language.

Judgment of
the Court

Expenses of the Federal Court.—The administrative expenses of the Federal Court, including all salaries, allowances and pensions of the officers and the servants of the Court shall be charged on the revenues of the Federation. The income of the Court made up of any fees or other moneys taken by the Court shall form part of the revenues of the Federation. The Governor-General is to exercise his individual judgment as to the amount to be included in respect of the administrative expenses of the Federal Court in any estimates of expenditure laid by him before the Federal Legislature.*

Charge on
Federal
Revenues

The High Courts in the States.—A High Court in a Federated State, as referred to here, will mean any Court declared to be a High Court by His Majesty after communication with the Ruler of the State.†

Meaning

Appeals to His Majesty in Council.—In spite of this extensive original and appellate jurisdiction and important advisory functions, the Federal Court of India is not the highest Court of Appeal for British India and the Federated States. Appeals can still be

Appeals
without
leave of the
Federal
Court

taken to His Majesty in Council, which in actual practice means the Judicial Committee of the Privy Council. Under the provisions of the Act* an appeal may be brought to His Majesty in Council from a decision of the Federal Court *without leave* in respect of a dispute concerning the interpretation of the Act or an Order in Council, or the Instrument of Accession of any State, or the agreement regarding the administration in any State of a law of the Federal Legislature. Appeals in other cases may be taken to His Majesty in Council *by leave* of the Federal Court or of His Majesty in Council.*

Federal
Court not
the highest
Court of
Appeal

Thus it is clear that the Federal Court is not the Highest Court of Appeal as far as the Federation of India is concerned. "It is not the final appellate authority—the last authoritative judicial interpreter of the Constitution, or the ultimate declarer of the civil law of the land." The position in the words of Professor K. T. Shah seems to be that—

Position
Summed up

"the law declared by the Privy Council,—and, in cases, unappealed against, by the Federal Court, is the final exposition of the constitutional law of India, as also of the ordinary law in so far as British India is concerned. As such, it is binding, until amended by the appropriate Legislatures, on all Courts in British India, and, as regards constitutional matters, in all Federated States."†

But one thing is not clear whether the advisory opinion expressed by the Federal Court can be taken to be a decision of the Federal Court for the purpose of appealing against to the Privy Council.

The Working of the Court.—The Federal Court of India has been established with three Judges. The Chief Justice, Sir Maurice Gwyer, K.C., is a Britisher, and two puisne Judges, Sir Shah Muhammad Sulaiman and Mr. S. Varadachari, are Indians. It has its seat at Delhi. Some prominent lawyers have already enrolled themselves as practitioners before the Court. A dispute which arose between the Government of the Central Provinces and Berar and the Government of India regarding the power to levy tax on the sale of petrol and lubricants was referred to it for decision by the mutual consent of the parties. After hearing both the sides, the Federal Court decided in favour of the Provincial Government holding the new tax to be within the sphere of the Province. The Government of the United Provinces filed another suit before the Court in which it claimed that the fines

imposed and collected in the cantonment areas should be credited to the Provincial revenues with retrospective effect since 1924. The suit was dismissed by the Court, but it seems that the Provincial Governments can claim these fees and fines after April 1, 1939. Many more suits involving the interpretation of the constitution are likely to be referred to the Court for decision in the near future.

High hopes are pinned to the Federal Court. It is expected to serve as the bulwark of civil freedom and national solidarity—linking in one bond of unity the various units of the Federation, the Federated States and the British Indian Provinces, by bringing them under one uniform judicial system. It must stand forth as the guardian of the Constitution and the custodian of the majesty of law and the rights of all—of the Federal Centre, the Units, and the individual citizens. The task before it is by no means easy.

" If it either becomes a citadel of social obscurantism, prohibiting progressive legislation on the ground of guarantees to minorities, or of a defiant spirit of advance, justifying every legislative action however fundamentally it may go against the religious and cultural interests of communities, it will fail to cement the constituent states of the Federation. If it becomes a champion of Central Authority and allows the Federal Legislature and Executive to override, on various pretences, the guaranteed rights of the States or on the other hand if it tries to uphold and extend the jurisdiction and sovereignty of the States at the expense of the necessary powers of the Central Government, it will mar the prospects of a free, progressive, and united India. Only if it follows a steady middle course, and establishes, within a short time, a prestige and an ascendancy which neither the Central Government nor the States, neither the majority nor the minority would dare to question, then and only then can India be assured of a safe voyage through the strong seas of constitutional Federation."*

Real Function of the Federal Court

It is hoped that the Court will establish a healthy tradition of harmonious combination of both classes of units of the Federation—the British Indian Provinces and the Indian States, with the ultimate aim of establishing the reign of law throughout the length and breadth of this great land. The short experience of the working of the Federal Court augurs well for the future.

* Panikkar : *Federal India*.

CHAPTER XV

THE PROVINCIAL JUDICIARY

The High Courts

The High Courts for British India ; Constitution of the High Courts ; the Judges of the High Courts ; Jurisdiction of the High Courts ; Relationship of the High Courts to the Provincial Governments ; Independence of the High Courts ; the Subordinate Judiciary.

The High Courts for British India.—The Government of India Act, 1935, recognizes* the following courts as High Courts in British India :

The High Courts of Calcutta, Madras, Bombay, Allahabad, Lahore and Patna ; the Chief Court in Oudh ; the Judicial Commissioners' Courts in the Central Provinces and Berar, in the North-West Frontier Province, and in Sind ; any other court in British India constituted or reconstituted as a High Court under the provisions of the Act ; and any other comparable court in British India which His Majesty in Council may declare to be a High Court for the purposes of this Act.*

It is also provided that if before the introduction of Provincial Autonomy, provision is made for the replacement of any court or courts mentioned above by a High Court, the new Court is also to be recognized as the courts mentioned above. It was pointed out in the Parliament that this provision is introduced to meet the possibility of converting the Judicial Commissioner's Court in the Central Provinces and Berar into a High Court. Since then this has been done by an Order in Council made in February, 1936. The new High Court of the Central Provinces and Berar, is automatically recognized as a High Court under the above provisions.*

Provision† is also made for the constitution or reconstitution of High Courts by letters patent. If the Provincial Legislature presents an address for the purpose to the Governor for submission to His Majesty, the latter may by letters patent constitute a High Court or reconstitute the High Court for that Province or its

High Court
under the
Act

The High
Court of the
Central pro-
vinces and
Berar

* Sec. 219. † Sec. 229.

part, or amalgamate the two High Courts if they exist in that Province. If this is done, the letters patent are to provide for the continuance in their respective offices of the existing Judges, officers and servants of the Court or Courts, and also for the carrying on before the new Court or Courts of all pending matters.

Constitution
of a new
High Court

Constitution of the High Courts.—Every High Court in British India is a court of record.* It consists of a Chief Justice and such other Judges as His Majesty may from time to time deem it necessary to appoint. This is, however, subject to the provision that the Judges appointed by His Majesty along with the additional Judges appointed by the Governor-General under the provisions of this Act must not exceed the maximum number fixed in relation to that particular Court by His Majesty in Council. According to "the Government of India (High Court Judges) Order, 1937" the maximum strength *excluding* the Chief Justice, the Chief Judge or the Judicial Commissioner but *including* any additional Judges or additional Assistant Judicial Commissioners to be appointed by the Governor-General, of the various High Courts is as under:

Maximum
strength of
the various
High Courts

The High Court at Madras	... 15 Judges
The High Court at Bombay	... 15 Judges
The High Court at Calcutta	... 19 Judges
The High Court at Allahabad	... 12 Judges
The High Court at Lahore	... 15 Judges
The High Court at Patna	... 11 Judges
The High Court at Nagpur	... 7 Judges
The Chief Court at Oudh	... 5 Judges
The Court of the Judicial Commissioner of Sind—	
5 Assistant Judicial Commissioners.	

The Court of the Judicial Commissioner of the North-West-Frontier Province—	
2 Assistant Judicial Commissioners.	

The Judges of the High Courts.—Every High Court Judge is appointed† by His Majesty by warrant under the Royal Sign Manual, though temporary and additional Judges can be appointed by the Governor-General in his discretion.‡ It is provided that in case the office of the Chief Justice of a High Court falls vacant, or a Chief Justice is unable to perform his duties by reason of his absence or for any other reason, the Governor-General may in his discretion

Appoint-
ment

* Sec. 220. † Sec. 220 (2). ‡ Sec. 222.

**Temporary
and Addi-
tional Ap-
pointments**

appoint one of the other Judges of the Court to perform the duties of the said Chief Justice till the person appointed by His Majesty enters on the duties of his office, or the original Chief Justice resumes his duties. In case of a vacancy in the office of any other Judge of a High Court for any reason, the Governor-General is empowered to appoint in his discretion, a person duly qualified for appointment as a Judge to act in the vacancy until some permanent appointment is made by His Majesty or the permanent Judge resumes charge. The Governor-General can also appoint duly qualified persons as additional Judges of a High Court for the maximum period of two years, if he thinks that such an increase is necessary on account of any temporary increase in the business of the High Court or the arrears of work. These appointments, however, are subject to the provisions regarding the maximum strength of the High Courts mentioned above

**Retirement
and Tenure**

The High Court Judges hold office till they are sixty years* of age though they can resign their office earlier by addressing their resignation to the Governor of the Province, wherin is situated the seat of the Court to which they belong. They can also be removed from office by His Majesty by warrant under the Royal Sign Manual on the ground of misbehaviour or of infirmity of mind or body, if the Judicial Committee of the Privy Council so reports on being consulted by His Majesty. Thus the High Court Judges hold office during *good behaviour* and not *during pleasure* as was the case before. Regarding the age-limit, the J. P. C. observed :

**J. P. C.'s.
Observation**

" It has been represented to us that the retiring age of Judges should not be raised to sixty two, but should continue to be sixty ; and we concur. We have suggested that in the case of the Federal Court the age should be sixty-five, because it might otherwise be difficult to secure the services of High Court Judges who have showed themselves qualified for promotion to the Federal Court ; but the evidence satisfies us that in India a Judge has in general done his best work by the time he has reached the age of sixty." †

Thus the *status quo* has been maintained on this point, but there is one difference that while under the previous law the age-limit of sixty was not statutory, being enforced by taking an undertaking from the Judges at the time of their appointment to retire at that age, it is so under the new Act and the Judges of the High Courts must retire at the age of sixty.

* Sec. 220. (2). † Para. 331.

A person, in order to be eligible for appointment as a Judge of a High Court, must be a barrister of England or Northern Ireland of at least ten years' standing, or a member of the Faculty of Advocates in Scotland of the same standing—or must be a member of the Indian Civil Service of at least ten years' standing, who has for at least three years served as or exercised the powers of a District Judge—or has for at least five years held a judicial office in British India not inferior to that of a Subordinate Judge or Judge of the Small Cause Court—or has for at least ten years been a pleader of any High Court, or of two or more such Courts in succession. A person is not eligible for appointment as the Chief Justice of any High Court constituted by letters patent until he has served for not less than three years as a Judge of a High Court, unless he is or at the time of his appointment to judicial office was, a barrister, or a member of the Faculty of Advocates, or a pleader. In computing the standing of a person as required above, any period during which the person has held judicial office after his becoming a barrister, an advocate, or a pleader is to be included.*

It will be noticed that the statutory requirement that not less than one-third of the Judges of every High Court must have been called to English, Scottish, or Irish Bar, and that not less than one-third must be members of the Indian Civil Service is abolished. The observation of the J. P. C. on this point was :

"We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore dissent from the proposed amendment of the law †

On the other hand, I. C. S. Judges have been retained. Indian public opinion has often expressed itself against such appointments as I. C. S. Judges are likely to bring the outlook and view point of the executive to bear upon their functions as Judges. On the other hand it is suggested that the I. C. S. Judges possess great legal and practical training and the understanding of the conditions and the people of the country....The J. P. C. observed :

" but we are clear (and we are informed that this is the general opinion of their colleagues) that the Indian Service Judges are an important and valuable element in the judiciary, and their

Qualifica-
tions of High
Court Judges

Statutory
requirement
regarding
Barristers,
Judges and
I. C. S.
Judges
abrogated

Civilian
Judges

J. P. C's.
views

* Sec. 220 (3). † Para. 331.

presence adds greatly to the strength of the High Court. It has been suggested that their earlier experience tends to make them favour the Executive against the subject, but the argument does not impress us; we are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which barristers and pleaders from the towns may not always possess, and we do not doubt that the Crown will continue to appoint them."*

Thus these prize-posts for the I. C. S. are kept in tact though it is against Indian public opinion and is also against British practice.

The office of
the Chief
Justice

Under the Act of 1919, a Civilian Judge or a non-barrister Judge could not hold permanently the office of the Chief Justice. This bar has now been removed so that non-barristers as well as civilians can now hold that office. This throwing open of the office of the Chief Justice to non-legal element is objected to in India. Sir Tej Bahadur Sapru in his Memorandum submitted :†

"The best traditions of the courts in India have been built up by Judges recruited from the profession, and their surroundings in England or by Judges who have been recruited from the ranks of the profession in India. I shall not be willing to accept any change in the law which would in any degree or measure affect the continuance of these traditions."

Sir T. B.
Sapru's
view

J. P. C.'s.
views

Provision
regarding
the Judges
before the
enforcement
of the Act

Salaries and
Allowances
of the High
Court
Judges

The J. P. C., however, observed :

"The Indian Civil Service Judges are not at the present time eligible for permanent appointment as Chief Justice of a High Court, though we understand that this rule does not apply in the case of Chief Courts. We see no reason for this invidious distinction, and we think that His Majesty's freedom of choice should not be thus fettered."‡

It is expressly provided in the Act that High Court Judges, functioning before the introduction of the Provincial Autonomy, are to continue in office and are to be regarded as if they have been appointed under the provisions of this Act subject to the provision that they are not required to relinquish their office at an earlier age than they would have been required if this Act had not been passed. Every High Court Judge is required to make and subscribe the prescribed oath before the Governor or some person appointed by him.||

The Judges of the High Courts are entitled to such salaries and allowances and rights in respect of leave and pensions as may from time to time be fixed by His Majesty in Council. The salary of a Judge and his rights in respect of leave and pension cannot

* Para 331. † Para 331. ‡ Para 331. § Sec. 231 (1). || Sec. 220 (4)

be varied to his disadvantage after his appointment.* The Government of India (High Court Judges) Order 1937, has fixed the salaries, allowances, etc., of the Judges of the various Indian High Courts. The salaries of the Judges are given below :—

	Rs. per annum
Chief Justice of the High Court at Calcutta	72,000
Chief Justice of the High Courts at Madras, Bombay, Allahabad Patna and Lahore	60,000
Chief Justice of the High Court at Nagpur	50,000
Judge of the High Courts at Cal- cutta, Madras, Bombay, Allaha- bad, Patna and Lahore ; Chief Judge of the Chief Court of Oudh	48,000
Judge of the Chief Court of Oudh Judicial Commissioner of Sind ..	42,000
Judge of the High Court at Nagpur Judicial Commissioner of the North-West Frontier Province ..	40,000
Assistant Judicial Commissioner of Sind or of the North-West Frontier Province	39,000
	36,000

These salaries and allowances of the Judges, and the servants and officers of the High Courts, and other administrative expenses of the High Courts are charged upon the Provincial revenues of which the fees or other moneys taken by the Courts form part. The Provincial Governors are to exercise their individual judgment regarding the amount to be included in the Provincial budgets in respect of such administrative expenses of the High Courts.†

Salaries and
Expenses
charged on
the Provin-
cial revenues

Jurisdiction of the High Courts.—The jurisdiction of the High Courts, the law administered in them, the respective powers of the Judges in relation to the administration of justice in the court, including any power to make rules of court and to regulate the the sittings of the court and its members sitting alone or in division courts, are the same under the new Act as they were before the introduction of its Provincial part ‡. This means that the present original and appellate jurisdiction of the High Courts of Calcutta,

Legal
Jurisdiction

* Sec. 221. † Sec. 228. ‡ Sec. 223.

Bombay and Madras, and the appellate jurisdiction of the other High Courts continue. This jurisdiction extends over all matters civil and criminal and matters connected with wills, bankruptcy, admiralty, and of divorce only in the cases of Christians, Parsis, and Hindus married under the Civil Marriage Act or Special Marriage Act.

Administrative Jurisdiction

The High Court have also been vested with certain administrative jurisdiction.* This consists of superintendence over all courts in India subject to the appellate jurisdiction of a High Court. In respect of these courts the High Court is empowered to call for returns, make and issue general rules and prescribe forms for regulating their practice and proceedings. prescribe forms in which books, entries and accounts shall be kept by their officers, and settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts. Such rules, however, must be according to the provisions of the law in force, and require the previous approval of the Governor. The High Court, nevertheless, is not authorised† to question any judgment of any inferior court, *viz.*, a court subject to its appellate jurisdiction, which is not otherwise subject to appeal or revision. If an application‡ is made to the High Court by the Advocate-General for the Federation or by the Advocate-General of a Province for the purpose, and the High Court is satisfied that a case pending in an inferior court, being a case which the High Court has power to transfer to itself for trial, involves or is likely to involve the question of the validity of any Federal or Provincial Act, it can transfer that case to itself for trial.

No original Jurisdiction in revenue matters

No High Court has any original jurisdiction in any matter concerning the revenue,§ or concerning any act ordered or done in connection with its collection according to the usage and practice of the country or the prevailing law until otherwise provided by the Act of the appropriate Legislature. But such a Bill or amendment cannot be moved in the Federal or the Provincial Legislature without the previous sanction of the Governor-General in his discretion and the Governor in his discretion, respectively.

* Sec. 224. † Sec. 224 (2). ‡ Sec. 225. § Sec. 226.

Special provision* is made for Courts of Appeal in revenue matters. No member of the Federal or Provincial Legislature can become a member of any tribunal in British India having jurisdiction to hear appeals or revise decisions in revenue cases. Where before April 1, 1937, *viz.*, before the commencement of the Provincial Part of the Act, the power to entertain appeals or revise decisions in revenue cases was vested in the Provincial Government, the Governor is empowered to constitute a tribunal, consisting of person or persons as he may think fit in his individual judgment, to exercise similar jurisdiction, until other provision is made by the Legislature of the Province. The members of such a tribunal shall receive salaries and allowances to be determined by the Governor exercising his individual judgment. These salaries and allowances shall be charged on the Provincial revenues.

The jurisdiction of a Provincial High Court may be extended† to any area in British India not forming part of that Province by His Majesty in Council, if he is satisfied that an agreement in that behalf has been made between the Governments concerned. The power of any High Court to exercise jurisdiction in relation to more than one Province or in relation to a Province and an area not forming part of any Province, under any law or letters patent in force before the introduction of the Provincial Autonomy under the provisions of this Act, is not touched by the provision mentioned above. Where a High Court possesses any extra-provincial jurisdiction, the Legislature of the Province in which the Court has its principle seat is not empowered to increase, restrict or abolish that jurisdiction, if it had not that power before the passing of this Act. On the other hand, the Act does not prevent the Legislature having such powers from exercising them.

All proceedings in the High Courts must be in the English language.‡

The powers of the High Court are limited in certain ways. No proceedings lie in and no process can be issued from any court in India, including the High Courts, against the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in relation with the Indian States,

Courts of
Appeal in
revenue mat-
ters

Extra-pro-
vincial
Jurisdiction
of High
Courts

Certain
Limitations

* Sec. 296. † Sec. 230. ‡ Sec. 227.

the Provincial Governors, and the Secretary of State in a personal capacity or otherwise. No proceedings also lie with any court in India, except with the sanction of His Majesty in Council, against any person who has been the Governor-General, His Majesty's Representative for the exercise of the functions of the Crown in relation with the Indian States, a Provincial Governor, or the Secretary of State in respect of any act of omission or commission in performance or purported performance of the duties of their office.*

**Death
Sentences**

There is also a special provision regarding death sentences. Where any person has been sentenced to death in a Province, the Governor-General in his discretion has all powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council before the commencement of the Provincial Part of this Act. His Majesty's right, or if that right is delegated to the Governor-General by his Majesty, to grant pardons, reprieves, respites or remissions of punishment is kept in tact.

Relationship of the High Courts to the Provincial Governments.—Before the passing of this Act, the administrative machinery of the High Courts, except that of the Calcutta High Court, was subject to the control of the Provincial Governments and Legislatures. The Simon Commission proposed that this administrative control should be placed in the hands of the Central Government and their expenditure and the receipts from court fees should form part of the Central Government's Budget. The J. P. C. disagreed with this and recommended that all the High Courts, including the Calcutta High Court, should be brought into relationship with their respective Provincial Governments. It observed:

"But the High Court is, in our view, essentially a provincial institution: indeed, as subsequent paragraphs show, we seek to secure for each High Court an administrative connection with the Subordinate Judiciary of the Province which we regard as of the highest importance, and which we think could not be maintained—or only in an atmosphere of mistrust and suspicion which would gravely detract from its advantages—if the Court were an outside body, regarded (as it would probably be) as an appanage of the Federal Government. Apart from these reasons' we are satisfied that the financial adjustments which would be involved in any attempt to centralize the administration and financing of the High Courts would be of a far more complicated nature than the Commission appear to have supposed."†

**Provincial-
ization of the
High Courts**

* Sec. 306. † Para. 333.

In pursuance of this, the administration of justice is put in the Provincial Legislative List. Item 1 in that List is made up of "Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil power); the administration of justice; constitution and organization of all Courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention." Item 2 consists of "Jurisdiction and powers of all Courts except the Federal Court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts."

On the other hand, the Federal Legislature has an exclusive power to make laws in respect of the jurisdiction, powers and authority of all courts in British India except the Federal Court, with respect to any of the matters in the Federal Legislative List.* The Provincial Legislatures have also similar powers in respect of courts within their respective Provinces regarding subjects within their exclusive jurisdiction. And both the Federal and the Provincial Legislatures have concurrent powers in respect of matters on the Concurrent Legislative List. Thus from the point of view of relationship with the Legislatures in the country, the High Courts are neither completely federalized nor provincialized.

Regarding this the J. P. C. observed :

"It has been suggested that this would enable either the Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to Courts of inferior status to the grave prejudice of the rights of His Majesty's subjects in India. In theory this is no doubt possible; but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law making power for the purposes which we have mentioned and, whatever use they may make of it, we are satisfied that they will never willingly enact legislation which would prejudice or affect the status of the High Courts . . . †"

Independence of the High Courts.—The provincialization of the High Courts necessitates the safeguarding of the independence of the High Courts against undue political pressure from the Provincial Executive or the Provincial Legislature. It was admitted by the J. P. C. that the Provincial Legislatures had from time to time tended to assert

The High Courts
vis-à-vis the
Federal and
the Pro-
vincial
Legislatures

J. P. C's
Observation

Protection
against
political
pressure

* Item 58. † Paras. 334.

Expenses not subject to the vote of the Legislatures

Reservation of Bills derogatory to the powers of the High Courts

Position and Tenure of the Judges

Office during good behaviour

Conduct of a Judge cannot be discussed in the Legislature

their powers in a way which might under the new Constitution affect the efficiency of the Courts.* The High Courts must be secured a position of independence and freedom from pressure for political purposes, if they are to command the confidence of the people and do discharge their functions properly. It is for this purpose that it is provided in the Act that the expenses of the High Courts should be charged on the Provincial revenues, which means that they can be discussed but not voted upon by the Provincial Legislatures. Moreover in accordance with the recommendation of the J. P. C., the Governor-General and the Governors have been instructed in their respective Instruments of Instruction to reserve for the signification of His Majesty's pleasure any Bill which in their opinion would so derogate from the powers of the High Courts as to endanger the position which those Courts are designed to fill under the Constitution Act.†

The position and the tenure of the Judges are also safeguarded in order to give them a feeling of security, which is absolutely essential for creating a sense of independence in them. The appointment and the removal of the Judges are in the hands of His Majesty beyond the control of political influences in the Provinces. The Judges hold office till the age of sixty *during good behaviour* and *not during pleasure*. Their salaries and allowances, and rights in respect of leave and pensions are fixed by His Majesty in Council. The salaries of the Judges and their rights in respect of leave or pension cannot be varied to their disadvantage after their appointment. The administrative expenses of the High Courts, including the salaries, allowances, etc., of the Judges are charged on the revenues of the Provinces and are not subject to the vote of the Provincial Legislatures. Lastly no discussion can take place in a Provincial Legislature with respect to the conduct of any Judge of the Federal Court or of a High Court in the discharge of his duties.‡

The Subordinate Judiciary.—The J. P. C. observed :

"It is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important,

* Para. 332. † Paras. XXVII, and XVIII. ‡ Sec. 86 (1).

perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges."*

The Committee also thought that:

"Provisions, settling definitely the nature of the administrative superintendence to be exercised by the High Courts over the Subordinate Courts in a Province, should find a place in the New Constitution."†

It recommended that a strict rule should be adopted and enforced that—

"recommendations from, or attempts to exercise influence by members of the Legislature in the appointment or promotion of any member of the Subordinate Judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be."‡

The actual provisions of the Act in respect of the Subordinate Judiciary are described in Chapter XVI.

Need for
preserving
their inde-
pendence

Under the
administra-
tive control
of the High
Courts

Recommen-
dations and
attempts to
exercise
influence

* Para 337. † Para 334. ‡ Para 338.

CHAPTER XVI

THE SERVICES OF THE CROWN IN INDIA

Importance of the Services ; Safeguards for the Services British Element in the Services ; Classification of the Public Services the Defence Services ; the Civil Services of the Crown in India Services recruited by the Secretary of State ; Provincialization of the Services ; Conditions of Service ; Provisions in respect of Chaplains ; Civil Services recruited by the Governor-General and the Governors ; Special Provisions regarding Police Forces ; Special Provisions regarding Judicial Officers ; Special Provisions in respect of the Political Department ; Protection of Certain Existing Officers ; Special Provisions in respect of the Staffs of the High Commissioner and the Auditor of the Indian Home Accounts ; The Public Service Commissions ; General Provisions in respect of the Services ; Provisions Regarding Pensions, etc. ; General Remarks.

Importance of the Services.—The Public Services always play a silent but important part in the public administration of a country. If "that is best, which is administered best" has any meaning, it means that the success of a Constitution, howsoever well-devised it may be, depends on how its actual provisions are put into practice, or in other words how the public servants discharge their public duties. A contented and efficient Public Service lends stability to the Constitution which it otherwise lacks, as while the men at the helm of affairs come and go in accordance with the exigencies of party politics, the Services remain. With their accumulated experience of men and matters, they help the professional politician at the top, who more often than not, is new to the task of administration.

Position of the Services in India

If all this is true of other countries, it is doubly so of India, where the masses, till recently, have been under a bureaucratic rule. The Civil Services here have not merely occupied a position of special importance, enjoying special salaries, emoluments, privileges and powers regarding administration, but have also taken a prominent part in the decision of public policies. They virtually controlled the working of the administrative machine, as with the exception of a few highest offices, such as that of the Governor-General and the Governors of some of the Provinces, almost all the civil offices in India were either

occupied by them, or at least were open to them. In course of time they have acquired vested rights in respect of salaries, pensions, leave, etc., which they are determined to safeguard at all costs even under the changed conditions.

Safeguards for the Services.—The Joint Parliamentary Committee observed in this connection :

" The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving to successive Ministers advice based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide. The grant of responsible government to a British Possession has indeed always been accompanied by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new ; but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal and to co-operate with those who may be called on to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them."*

Nobody need quarrel with the J. P. C. over this observation. But these Services must be national and must be imbued with the idea of national public service. The members of the Services must regard themselves as public servants and must feel responsible to the people, rather than regard themselves as the masters of the people and responsible to some authority alien to the latter. This is, unfortunately, true in the case of the Public Services in India. There is another peculiar feature of the Indian Public Services that, generally speaking, they are alien in personnel, spirit, and outlook to the people of the country. There is a strong and dominating British element in the Services which, with certain honourable exceptions, more often than not, finds it difficult to come down to a level where it can understand the needs and the aspirations of the Indian masses. Even the Indian personnel of the Services has not come up to the expectations to the extent one would like. This, however, does not mean that the Indian Civil Services are not efficient or have not done any good to the people of the country ; on the contrary they are very efficient—in fact everything else is sacrificed to efficiency—and have also served the people of the country in their own way.

Vested Interests of the Services

J. P. C.'s Observations on the functions of the Services

The Services must be national

The British Element in the Services

Indian Services are efficient

* Para. 274.

The Co-operation of the Services is necessary for the success of the new Constitution

The Services must be kept contented

Safeguarding their rights and interests

J. P. C's Observations

The strongest support of the Constitution

But taking things as they are, there is no denying the fact that without the active co-operation of the Services, the new Constitution cannot be properly worked out. "The services will be the lynch-pin of the new Constitution and success will depend to a certain extent upon their energetic support."* The importance of the administrative side of the functions of the Service is likely to increase rather than decrease under the new Constitution with expanded Legislatures based on widened franchise, inexperienced Ministers and more frequent ministerial changes. If this is so, the Services must be made to feel contented by the safeguarding of their rights and privileges, and the conditions must be maintained which should attract the proper kind of recruits to the Services. The Chapter on the Public Services in the Act attempts to achieve this—rather it crosses the mark in that way. Provisions are inserted in the Act with the object of safeguarding the existing rights and interests of the Services in respect of pay, emoluments, pensions, leave, right of appeal, appointment, etc., for protecting the Services from political influence and pressure, for assuring their efficiency and impartiality, and for making it worth while for the proper kind of candidates, particularly the British, to offer themselves for recruitment.

British Element in the Services.—It may be pointed out here that under the new Constitution, the British element in the Public Services is to be retained almost at its present strength.

The J. P. C. observed in connection with this :

"The United Kingdom, no less than India, owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full. But the question has another and scarcely less important aspect ; for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and hold the best type of men, whether British or Indian. Parliament may, therefore, rightly require in the interests of India as well as of this country, not only that the Services are given all reasonable security, but that none is deterred from entering them by apprehensions as to his future prospects and career. It is indeed the interest of India that must be considered above all. The difficulties of the new Constitution will be aggravated in every respect if the administrative machinery is not thoroughly sound. One of the strongest supports of the new Governments and their new Ministers that we can recommend, and that the Constitution can provide for, will be impartial, efficient and upright Services in every grade and department.†

* Dr. Sir Shafsat Ahmad Khan : The Indian Federation, p. 210.
† Para. 275.

Thus the British element in the Services is to continue. It is intended to continue the present state of affairs in respect of the European and the Indian elements in the Services based on the recommendations of the Lee Commission.

Classification of the Public Services.—The Public Services in India may be classified in two broad divisions as the Defence Services and the Civil Services. The latter may be further classified as under:—

(i) The All-India Services recruited and controlled by the Secretary of State.

(ii) The Federal Services under the general control of the Governor-General.

(iii) The Provincial Services under the general control of the Governor.

Special provisions are to be found in the Act in respect of these different classes of the Services.

The Defence Services.—The Defence is a reserved Department under the provisions of the new Act. It is placed directly under the charge of the Governor-General, beyond the political control of the popular Ministers. Special provisions are made in the Act in respect of the Defence Services. It is provided that the pay and the allowances of the Commander-in-Chief of His Majesty's Forces in India and the other conditions of his service are to be such as His Majesty in Council may direct.* His Majesty in Council may also require that appointments to specified offices connected with Defence shall be made by him or in the way he may direct. His Majesty's power vested in him by any Act or by virtue of the Royal Prerogative is not touched by this provision.† This is perhaps intended to provide for co-ordination, if need be, of the entire policy of Imperial Defence with that of India. The power of His Majesty and of any persons authorized for the purpose by His Majesty to grant commissions in the naval, military, or air-force raised in India extends to the granting of a commission to any person lawfully enlisted or enrolled in that force.‡ This means that His Majesty can grant commissions in the Indian Forces to subjects of Indian States or natives of territories adjacent to India, such as the Gurkhas. The Letters

Pay, allowances and other conditions of service of the Commander-in-Chief

Other Defence Appointments

Commissions in India-Forces

* Sec. 2332. † Sec. 23. ‡ Sec. 234.

Control of
the Secre-
tary of State

Rights of
Appeal

Pay to be
charged on
the Federal
Revenues

Civil and
Personnel

Patent constituting the office of the Governor-General authorises the Governor-General to grant in the name of His Majesty and on his behalf commissions in the Indian Naval Forces, Land Forces, and the Air Force. This provision gives statutory recognition to the distinction in the Indian Army between commissions directly granted by the King and those granted by the Governor General on his behalf. The Secretary of State, acting with the concurrence of his Advisers, is empowered* to specify the rules, regulations and orders in respect of the conditions of service of all or any of His Majesty's Forces in India which shall be made only with his previous approval. This asserts the ultimate authority of the Secretary of State over the conditions of service of His Majesty's Forces in India. The rights of appeal which members of His Majesty's Forces in India enjoyed immediately before the passing of this Act are kept intact under the Act. The Secretary of State is authorised to receive any memorial from a member of His Majesty's Forces as he or the Secretary of State in Council could receive before the passing of this Act.† The sums regarding pay, allowances, pensions or other sums payable to or regarding persons who are serving or have served, in His Majesty's Forces, and payable out of the revenues of the Federation shall be charged on those revenues. This does not limit the interpretation of the general provisions of this Act charging the defence expenditure on the Federal revenues.‡ This means that the Federal Ministers and the Federal Legislature cannot touch the Defence expenditure in respect of pay, allowances, and pensions, etc., of the military personnel. The above-mentioned provisions, *viz.*, the control of the Secretary of State, with respect to conditions of service, the rights of appeal of the members of His Majesty's Forces in India to the Secretary of State, and the pay, etc., of members of the Forces to be charged on the Federal revenues, also apply to persons who, though they are not members of His Majesty's Forces, yet they hold at present or have held posts in India which are connected with the equipment or administration of those Forces or are otherwise connected with Defence.§ In respect of such officers, the J. P. C observed:

* Sec. 235. † Sec. 236. ‡ Sec. 237. § Sec. 238.

"They are clearly entitled to the same kind of rights and protection as they now enjoy as regards their service conditions although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected. Nevertheless their rights should not be left in doubt. Their pay and pensions would be included under the head of expenditure required for the reserved Department of Defence, and as such would not be submitted to the vote of the Legislature. There should be no room for misunderstanding on this point."*

J. P. C.'s
Observations

The rights of the descendants of those persons who have served in India in the military or the civil service of the Crown for appointment of officers to His Majesty's Army are specially safe-guarded as it is laid down that the same provision as has existed so far or equal provision must be made for the purpose. The persons who served in Burma or in Aden before their separation from India are to be considered as persons who served in India for the purposes of this provision.†

Rights in
respect of
appointment
of the sons of
those who
have served
in military
or civil
service
safeguarded

The Civil Services of the Crown in India.—The Civil Services in India, as has been pointed out above form a very important part of the administrative machine in India. They discharged very important and useful functions in the past. Under the new Constitution their functions are no less important, though their discharge probably requires a little different outlook. In order to keep them contented, many provisions are introduced in the Act which amply safeguard their interests. The most important of these posts were filled up by the Secretary of State. The system is to continue under the new Act.

Services Recruited by the Secretary of State.—It is laid down† that after the introduction of the Provincial Autonomy under the scheme of the Act, appointments to certain civil services known as the Indian Civil Service, the Indian Medical Service (Civil) and the Indian Police Service—henceforward to be known as the Indian Police—are to be made by the Secretary of State until it is otherwise determined by Parliament. Subject to this condition, he can also make appointments to any service or services which he may consider necessary to establish for the purpose of getting

Recruitment
to I. C. S.,
I. M. S.
(civil), and
I. P. S.

* Para 295. † Sec. 239. ‡ Sec. 244 (1).

Annual Statement

suitable persons to fill civil posts in connection with the discharge of the functions of the Governor-General to be exercised in his discretion under the provision of this Act. The Secretary of State may from time to time prescribe respective strengths of these services.* He shall also cause to be laid annually before each House of Parliament a statement in respect of the appointments and vacancies regarding these services. The Governor-General is duty bound to keep the Secretary of State informed about the operation of this provision. He may if he thinks fit make recommendations for the modifications of this provision. The Governor-General is to perform these functions in his discretion.

Modification of this Provision

Provincialization does not mean complete Indianization

Provincialization of the Services.—Strong objection was taken by the British India Delegation to the recruitment to these Services by the Secretary of State. It considered that after the passing of the Constitution Act, recruitment for the Central Services should be by the Federal Government and for the Provincial Services, including the Indian Civil Service and the Indian Police, should be by the Provincial Governments. These Governments should have full power to determine the pay and other conditions of service for future recruits and also the proportion of Europeans that should be recruited. The continued recruitment of these vital Services by the Secretary of State is incompatible with Provincial Autonomy. According to Dr. Sir Shafaat Ahmed Khan

" Provincial self-government logically necessitates control by the Provincial Government over the appointment of its servants. A public servant cannot serve two masters. If he is appointed by the Secretary of State, it may be extremely difficult for the Provincial Government to exercise sufficient control and supervision. The authority of such Government may be undermined, and in some cases actually flouted by a public servant who is determined to assert his legal right." †

Thus the process of provincialization of the Services, started as a result of the recommendations of the Lee Commission, ought to have been continued to their logical conclusion by provincialization of all the

* Sec. 244 (2, 3, 4). † The Indian Federation, p. 216.

Public Services in the Provinces. But, although provincialization was urged, yet nobody meant complete Indianization of these Services to the entire exclusion of the British element. Generally speaking it was felt that for some time to come it was essential to have some trained and experienced British administrators in certain key positions with the idea of protecting the new experiment from unnecessary risks and hazards.

The J. P. C., however, went even further than the Services Sub-Committee of the First Round Table Conference and the White Paper in this respect. It appreciated the force of the argument that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy, but tried to point out the dangerous conclusions that might be drawn from it. It further argued :

" But the loyalty with which officers of the All-India Services have served the Local Governments under whom they work, notwithstanding that these Services are under the control of the Government of India and the Secretary of State, has a long tradition behind it ; nor has any Local Government felt difficulty in regard to maintaining discipline and securing full obedience of the Services on account of that control. Moreover, the evidence given before us confirmed the earlier conclusions of the Lee Commission and of the Statutory Commission that, with negligible exceptions, the officers of these Services have maintained excellent relations with the Indian Ministers under whom they have been working. Subject to certain qualifications to which we refer hereafter, we are of opinion that recruitment by the Secretary of State for the All-India Services, where it still continues, should come to an end except in the case of the Indian Civil Service and the Indian Police ; the functions performed by members of these two Services are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital to the stability of the new Constitution itself, that we could not view without grave apprehension an abrupt change in the system of recruitment for these two Services simultaneously with the introduction of fundamental changes in the system of government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, the new Constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations produced men of the right calibre. All the information which we have had satisfies us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion as proposed in the White Paper, that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his discretion " *

Provincialization of I.C.S. and I.P.S
not recommended

No risks

Recruitment
by the
Secretary of
State recom-
mended

Regarding the Indian Medical Service (Civil), the Committee wrote.

J.P.C.'s
Recommendations in
respect of
I.M.S. (Civil)

".... We are, however, convinced on the information supplied to us that the continuance of the Civil Branch of the Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services and that it will be necessary for the Secretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control of Ministers) to require the Provinces to employ a specified number of Indian Medical Service officers. In making these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil Services have an overriding claim."*

It was also pointed out in Parliament :

"It is proposed in the Act to reserve two main services : the Indian Civil Service and the Indian Police. We regard these services as absolutely vital to the future of India, they have vital tasks to perform, and in order to fulfill these tasks we must adhere to the form of recruitment suggested in the Act.

Need of
avoiding a
big change
in the
method of
recruitment
at the time
of the Con-
stitutional
changes

"I think it would be a mistake, at a time when we are introducing such vast changes in the Government of India, to make this immense change as well. Certain services have been transferred ; we intend these two important services should remain. Following the advice we have received, we consider that it would be a mistake to make another big change in the method of recruiting at a time when we are making these changes in the Government of India. There is no question of absolute finality in our decision. The Joint Select Committee recommended that after a certain period there shall be an inquiry into the operations of these services there is, therefore, this provision for a future enquiry."†

The White Paper proposed that at the expiry of five years after the commencement of the Act an enquiry should be held into the question of future recruitment of these two Services. The J. P. C. agreed with the principle of the enquiry but doubted the wisdom of fixing a definite and unalterable date for holding of this enquiry. Sir Samuel Hoare observed in respect of this point :

Enquiry in
respect of
Services
recommend-
ed

"It is very important, from every point of view, that we should make it clear that we have not abandoned the attitude that at sometime in the future we have to have an enquiry We however, desire to make it clear that we contemplate an enquiry at some time in the future, and that it is very important that the Secretary of State should be kept regularly informed by the Governor-General as to the conditions in existence, and as to any changes that are taking place The position of Parliament is not compromised. At the same time we make it clear, both to the House and Indian's

in India, that we have not abandoned the position maintained in the Joint Select Committee, that, in the nature of things, the constitutional changes must react upon service conditions in the future, and that that reaction must at some time in the future, involve an inquiry."*

There is a special provision† regarding irrigation. In order to secure efficiency in that Department in the Provinces, the Secretary of State may appoint persons to any civil service concerned with irrigation until it is otherwise determined by the Parliament.

The J. P. C. observed in respect of future recruitment to the Irrigation Services :

" The continued recruitment of an adequate number of highly qualified engineers, European as well as Indian, is clearly essential to the efficiency of the irrigation system, especially in the North West of India, on which the prosperity and indeed the existence of millions of the population depends . . . But after a close examination of the question, our conclusion is that the Irrigation Service ought to become a Provincial Service ; and we are not convinced that even in the Punjab, which is perhaps the crucial case, the situation necessitates a different policy without at least first allowing the Province to prove that it can successfully recruit its own Service . . . The question of irrigation is scarcely of less importance in Sind, but we think the Governor's special responsibility for the Sukkur Barrage is there a sufficient safeguard."‡

" Nevertheless we are of opinion that a power to reserve recruitment should be reserved to the Secretary of State, if a Provincial Government unfortunately proved unable to secure a sufficient number of satisfactory recruits and it appeared that the economic position of the Province and the welfare of its inhabitants was thereby prejudiced ; "||

In addition to the abovementioned powers, the Secretary of State also continues to make appointments of chaplains who are under the Ecclesiastical Department, which is a Reserved Department under the Act.§

He has also been given powers to reserve certain posts for those who are appointed by him. He can make rules¶ specifying the number and character of the civil posts which are to be filled up by persons appointed by him. This does not apply to posts in connection with any function of the Governor-General to be discharged in his discretion. The other posts, called

Special provisions in respect of Irrigation

J. P. C. observations

The Appointments of chaplains

The Reserved Posts

* Parliamentary Debates Vol. 302, Cols. 1001-1002. † Sec. 245.
‡ Para 309. || Para 310. § Sec. 269. ¶ Sec. 246.

Rules to be laid before Parliament

the Reserved Posts, except under conditions as may be prescribed in the rules, cannot, without the previous sanction of the Secretary of State, be kept vacant for more than three months, or be filled otherwise than by the appointment of a person appointed by the Secretary of State, or be held jointly with any other such post. Appointments and postings to these "Reserved Posts" must be made in the case of Federal Posts by the Governor-General and in the case of Provincial Posts by the Provincial Governor, both exercising their individual judgment. The above-mentioned rules must be laid before each House of Parliament as soon as it may be possible; and if the House of Parliament, within the next subsequent 28 days after a particular rule has been laid before it, passes a resolution that the rule shall be annulled, the rule shall henceforth be null and void. This, however, does not prejudice the validity of anything already done under the rule or the making of a new rule.

Rules in respect of the conditions of service to be made by the Secretary of State

Conditions of Service.—The conditions* of service in respect of pay, leave and pension, rights regarding medical attendance of all persons appointed to a civil service or civil post by the Secretary of State shall be such as may be prescribed by rules to be made by him. Regarding other matters too the conditions will be such as may be prescribed by rules to be made by him, in so far as he thinks proper to do so. If and in so far this is not done by him, the conditions of service shall be prescribed by rules to be made by the Governor-General or some person or persons authorised by him for the purpose in respect of persons serving in the Federal sphere, and by the Governor of the Province or some person or persons authorised by him in respect of persons serving in the Provincial sphere. No such rule can give to any such person less favourable terms respecting remuneration or pension than by the rules in force on the date of his first appointment. In the case of such a person serving in connection with the affairs of the Federation, and in the case of such a person serving in connection with the affairs of a Province, only the Governor-General and the Governor respectively

Certain Rules to be made by the Governor-General and the Governors

Rules cannot give less favourable terms

Orders in respect of promotion leave, suspension

* Sec. 247

exercising there individual judgment, can make any promotion or any order for suspension from office. If such a person is suspended from office, his remuneration during the period of suspension must not be reduced except to such extent as may be ordered by the Governor-General exercising his individual judgment, or by the Governor exercising his individual judgment, as the case may be. The salary and allowances of such a person are charged on the revenues of the Federation if he is serving in the Federal sphere, and on the revenues of a Province if he is serving in the Provincial sphere. If, however, such a person is serving in connection with the railways in India, only that much of his salary and allowances are to be charged on the Federal revenues as is not paid out of the Railway Fund. In addition to the salary and allowances, pension payable to such a person or in respect of him and government contributions to any pension fund or provident fund of such a person are to be charged on the revenues of the Federation. Without the consent of the Secretary of State in each case, no award of a pension less than the maximum pension that can be allowed under these rules can be made. No rules made under these provisions limit or abridge the power of the Secretary of State to deal with the case of any person, serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable. And also no rules made under these provisions by any person except the Secretary of State limit or abridge the power of the Governor-General or a Provincial Governor to deal with the case of any such person in a manner he may think just and equitable. The case of such a person shall not be dealt with in any manner less favourable to him than that provided by the rule applicable to him.

If such a person is aggrieved by an order affecting his condition of service and does not receive the proper redress on proper application to the person by whom such an order has been made, he may, without affecting his right of obtaining redress in any other way, complain to the Governor-General, if he is serving in the Federal sphere. If he is serving in the Provincial sphere, he may complain to the Governor of the Province. The Governor-General or the

Remuneration during the period of suspension

Salary and Allowances charged on the Revenue

Person serving in connection with the Railway

Pension and Contributions to Provident Fund

Power of the Secretary of State to deal with the case of such civil servant as he thinks fit

Case not to be dealt with less favourably

Right of complaint to the Governor General and the Governor

Order in respect of punishment, censure, pension, etc., to be made by the Governor-General or the Governor

Appeal to the Secretary of State

Grant of compensation

Provisions are applicable to some other civil and military servants

Governor, as the case may be, exercising their individual judgment, shall cause such action to be taken as they think just and equitable. Only the Governor-General in the case of a person serving in the Federal sphere, and the Governor in case of a person serving in the Provincial sphere, exercising their individual judgment, can make any order which punishes or formally censures or affects adversely his emoluments or rights in respect of pension or decides adversely the subject matter of any memorial of such a person. The latter can also appeal to the Secretary of State against any order made by any authority in India, which punishes or formally censures him or alters or interprets to his disadvantage any rule regulating his conditions of service. Any sums ordered to be paid out of the Federal revenues, or the Provincial revenues to such a person as a result of an appeal made to the Secretary of State, shall be charged upon the revenues of the Federation or the Province as the case may be.* The Secretary of State is empowered to sanction any compensation from the Federal revenues or the Provincial revenues to such a person, if he thinks that anything done under this Act affects adversely the conditions of service of such a person. The sums payable as compensation shall be charged upon the revenues of the Federation or the Province as the case may be. This provision, however, does not in any way prohibit expenditure by the Governor-General or the Governor from the revenues of the Federation or a Province respectively by way of compensation to persons who are serving or have served His Majesty in India in cases where the above-mentioned provisions have no effect, viz., in cases of civil servants not appointed by the Secretary of State.† The above mentioned provisions also apply in relation to any person who was appointed before the enforcement of this Act by the Secretary of State in Council, and also to those persons who hold or have held reserved posts, even though they were not appointed by the Secretary of State; and to those civil servants who are or were at the time of their first appointments

* Sec. 248. † Sec. 249.

officers in His Majesty's Forces. Civil servants holding commissioned offices before the commencement of the Provincial Part of this Act cannot be given less favourable terms regarding remuneration or pension by any rule that might be made than by the rules previously in force. Any Federal or Provincial liability regarding pension, etc., in respect of such a person is to be considered a liability arising under a statute passed before the commencement of this Act.

Holders of
commissioned
offices
not to
receive less
favourable
terms

These rules regarding conditions of service, pensions, etc., described above, also apply to persons serving in the Federal Railway Services, but in this case the functions of the Governor-General are to be performed by the Federal Railway Authority.

Rules
applicable to
the Railway
Services

Provisions in respect of Chaplains. Under the Act the Ecclesiastical Department has been preserved as a Reserved Department. It is specially provided* that the establishment of Chaplains to minister in India to be appointed by the Secretary of State shall continue. All those provisions which are applicable to the civil services recruited by the Secretary of State are applicable to the Chaplains with necessary modifications. It is provided that so long as establishments of Chaplains are maintained in the Provinces of Bengal, Madras, and Bombay, two members of that establishment in each of the above-mentioned Provinces must always be ministers of the Church of Scotland, who shall be entitled to have out of the Federal revenues such salary as is from time to time allotted to the Military Chaplains in those Provinces. The above-mentioned ministers of the Church of Scotland must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland. They shall be subject to the spiritual and Ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh whose judgment shall be subject to dissent, protest and appeal to the Provincial Synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

Chaplains to
continue in
service

Provisions
applicable to
them

Certain
Chaplains to
belong to
the Church
of Scotland

Civil Services Recruited by the Governor-General and the Governors.—The Civil Services, other than those recruited by the Secretary of State as described above are to be recruited by the Governor-General and the Governors in their respective spheres.

**Aim of the
J. P. C.**

"The Joint Select Committee aimed at making the Governor-General and the Governor responsible for the Central and Provincial services respectively in precisely the same way as the Secretary of State is responsible for the Imperial services to which he makes appointments, and expressed a hope that Federal and Provincial and Legislatures will pass local Acts guaranteeing to the services security on the lines on which the Secretary of State has framed his regulations for services recruited by him."^{*}

The Act tries to protect and guarantee all the important rights of the civil servants belonging to this class.

The Committee also enunciated another important principle that all the Services in India are the Services of the Crown. It observed :

**All the
Services
are Crown
Services**

**J. P. C.'s
observations**

"It is natural that the process by which during recent years Provincial Service officers have been gradually substituted for all India officers in the transferred departments and greater powers of control have been delegated to the Provincial Governments should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services But, whatever misunderstandings may have arisen in the past as to the real status of the Provincial Services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived no longer by devolution from the Government of India, but directly by delegation from the Crown, i.e., directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services will, therefore, be essentially Crown Services."[†]

In the opinion of the Committee the efficiency and morale of these Services will largely depend in the future on the development in India of the same conventions as have grown up in England, viz., the Legislature should have no control over the appointment or promotion and only a very general control over conditions of service of the civil servants. This means that the Governor-General and the Governors should be recognized as heads of the Central and the Provincial Services, respectively. The Committee, therefore, recommended that—

* Dr. Sir Shafat Ahmad Khan : The Indian Federation, p. 211.
† Para. 291.

" The Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services. Appointments to these Services would accordingly run in the name of the Governor-General and Governor respectively, and it would therefore follow that no public servant appointed by the Governor-General or Governor will be subject to dismissal, save by order of the Governor-General or Governor."*

The Governor-General and the Governors to be the recognized heads of the Services

It was desirable in the view of the Committee that the Central and the Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. Those should not be in substance inferior to those of persons appointed by the Secretary of State in regard to the protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion, and protection against such arbitrary alterations in the organization of the services themselves as might damage the professional prospects of their members generally. In respect of the latter, the Committee observed :

The status and the rights of the Services to be protected

" On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organization ; yet the morale of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognized cadre of higher paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers by law upon the Executive the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance."†

Thus the Committee aimed at protecting all the important rights of these Services, and the Act attempts to do that.

It is laid down in the Act; that, except as expressly provided by the Act, appointments to the civil services and the civil posts in India other than those recruited by the Secretary of State are to be made by the Governor-General or such persons as he may direct as far as the Federal services and posts are connected, while similar powers are to be exercised by the Provincial Governors or the persons directed by them in case of the Provincial services and posts. Subject to the provisions of this Act the

Governor-General and the Governors to be the appointing authorities.

Rules in respect of the condition of service

Persons employed temporarily

Limitations of the rule making powers

condition of service of these civil servants are to be such as may be prescribed in respect of the Federal Services by rules made by the Governor-General or the persons authorised by him for the purpose, and in the case of Provincial Services by rules made by the Provincial Governors or by persons authorised by them for the purpose. This is, however, subject to the provision that it is not necessary to make rules for regulating the conditions of service of persons employed temporarily on the condition that their employment may be terminated on one month's notice or less. Moreover it is not necessary to extend the scope of the rules to any matter which appears to the rule-making authority to be a matter not suitable for regulations by rule in the case of a particular class of civil servants. This rule-making authority of the Governor-General and the Governor is subject to certain limitations. It is laid down that the above-mentioned rules shall be framed so as to secure that in the case of a civil servant serving before the introduction of the Provincial Autonomy, no order altering or interpreting to his disadvantage any rule governing his condition of service shall be made except by an authority who had the power to make such an order on March 8th, 1926, or by a person empowered by the Secretary of State to give directions in respect of the changing of that rule. Moreover such a civil servant has the same rights of appeal to the same authorities against any order punishing or formally censuring him, or altering or interpreting to his disadvantage any rule regulating his conditions of service, or terminating his appointment before the age fixed for superannuation, as he had before the introduction of Provincial Autonomy, or he shall have similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person authorised by him for the purpose. It is laid down that every other civil servant, viz., one who was not serving before the enforcement of the Provincial Part of this Act on April 1st, 1937, has at least one appeal against any order as mentioned above which is not an order of the Governor-General or a Governor. This means that if any disciplinary action is taken against any such civil servant by any authority other than the Governor-General or a Governor, say by a Minister, it shall be subject to at least one appeal. Subject to these and other provisions of the Act, the conditions of service of the civil

servants in India may be regulated by the appropriate Legislature, though the above-mentioned rights in respect of an appeal, etc., of the civil servants cannot be taken away by any such Act. Moreover no rules made under this provision and no Act of any Indian Legislature can limit or abridge the power of the Governor-General or a Governor to deal with the case of any Indian civil servant in a manner which may appear to him to be just and equitable, provided that even the Governor-General or a Governor cannot deal with such a case in any manner less favourable to the person concerned than that provided by the rule or Act.*

Power of
the Gover-
nor-General
or a Gover-
nor to deal
with the case
of any
Indian Civil
Servant

The provisions also apply to the persons serving in the Railway Services of the Federation but the functions of the Governor-General mentioned above are to be performed by the Federal Railway Authority. But in framing rules for the regulation of recruitment to superior Railway posts, the Federal Railway Authority must consult the Federal Public Service Commission. In recruitment to such superior posts and other Railway posts, it must pay due regard to the past association of the Anglo Indian-community with Railway Services in India, and specially to the specific class, character, and numerical percentages of the posts held by the members of the Anglo-Indian community, and the remuneration attaching to such posts. It shall also obey any instruction which may be issued by the Governor-General with the intent of securing as far as may be possible to each community in India a fair representation in the Federal Railway Services. Except as mentioned above it is not obligatory for the Federal Railway Authority to consult the Federal Public Service Commission or otherwise make use of its services.†

The Federal
Railway
Services

Special
Rights of
the Anglo-
Indian Com-
munity safe-
guarded

A similar safeguard for the rights of the Anglo-Indian Community is assured in the action in respect of the framing of the rules for the regulation of recruitment to posts in the Customs, Postal and Telegraph Services; by the Governor-General or by persons authorised by him for the purpose. The Government of India has only recently framed rules showing favourable treatment to the Anglo-Indian

* Sec 241. † Sec. 242 (1 & 2). ‡ Sec. 242 (3).

community in respect of the conditions of Service and remuneration in these Departments.

Similar provisions, as described above, apply to appointments to and to persons serving on, the staff attached to the Federal Court or to a Provincial High Court, but the functions of the Governor-General mentioned above are to be performed by the Chief Justice of India in the case of the Federal Court and by the Chief Justice of the High Court in the case of a Provincial High Court. But in case of the Federal Court the Governor-General and in the case of High Court the Governor may in his discretion require that in certain cases persons not already attached to the court shall not be appointed to any job connected with the court except after consulting the Federal Public Service Commission or the Provincial Public Service Commission respectively. Moreover rules made by a Chief Justice for the above-mentioned purposes in so far as they relate to salaries, allowances, leave and pensions require the approval of the Governor-General or the Governor as the case may be.

Application of these principles to the staffs of the Courts

Special Provisions Regarding Police Forces.—It is laid down in the Act that notwithstanding anything in the foregoing provisions, the conditions of service of the subordinate ranks of the various Police Forces in India are to be such as may be determined by the Acts in respect of those Forces.^f

Provisions not applicable to the Judges of the Federal Court and the High Court

Special Provisions Regarding Judicial Officers.—The provisions described in this chapter do not apply to the Judges of the Federal Court or of the High Courts, but a member of the Civil Service acting temporarily as a Judge of a High Court is not to be considered a Judge of that Court for the purpose of these provisions. This does not prevent the Orders in Council relating to salaries, leave and pension of the Judges of the Federal Court or of a High Court from applying to Judges of these Courts if they were members of a Civil Service of the Crown in India before their appointments as Judges, such rules relating to that Service as may appear to His Majesty to be properly applicable to them. Moreover this does not exclude the office of the Judge of the Federal Court or of a High Court from the operation of the provisions with respect to the eligibility for civil office of persons who are not British subjects. Pensions of the Judges

Pensions of Judges

* Sec. 242 (4). † Sec. 243.

and other liabilities in connection with them before April 1st, 1937, shall be considered as a liability arising under a statute passed before that date.*

The Subordinate Judiciary.—The J. P. C. laid great stress on keeping the Subordinate Judiciary impartial and impervious to any political influence. To achieve that object special provisions are inserted in the Act. Appointments, posting and promotion of District Judges in a Province, including Additional District Judges, Joint District Judges, Assistant District Judges, Chief Judge of a small Cause Court, Chief Presidency Magistrate, Sessions Judges, Additional Sessions Judges, and Assistant Sessions Judges, are to be made by the Governor exercising his individual judgment, but the High Court is to be consulted in respect of such appointment. Nobody who is not already in the service of His Majesty, can be appointed a District Judge, if he is not a Barrister, a member of the Faculty of Advocates in Scotland, or a Pleader of not less than five years standing. He must also be recommended by the High Court for the purpose.† Appointments to the Subordinate Civil Judicial Service, i.e., the service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of a District Judge, are also to be made by the Governor from among the persons included in the list made for the purpose after an examination by the Provincial Public Service Commission. These appointments are subject to such regulations that might be made from time to time by the Governor in respect of the communal representation in these services. The Provincial Governor also makes rules defining the standard of qualifications for the persons desirous of joining the subordinate civil judicial service after consulting the Provincial Public Service Commission and the High Court.‡

The posting, promotion, grant of leave to persons belonging to these Services but holding a post below the rank of a District Judge are placed in the hands of the High Court subject to the right of appeal of such persons under other provisions of this Act. The High Court cannot deal with such persons otherwise than in accordance with the conditions of the service prescribed under the above mentioned provisions. In order to ensure efficiency of the Subordinate

Appointment,
Post-
ing, and Pro-
motion of
District
Judges

Appointment
to the Sub-
ordinate Civil
Judicial
Service

Standard of
Qualifica-
tions

Posting, pro-
motion, grant
of leave, etc.,
to vest with
the High
Courts

**Subordinate
criminal
magistracy**

Criminal Magistracy, it is laid down* that no recommendation shall be made for the grant of magisterial powers, or for enhancing or withdrawing any such powers from any person without consulting the District Magistrate or the Chief Presidency Magistrate as the case may be. It shall be noticed here that no special provision is made for the recruitment of the Subordinate Criminal Magistracy. Presumably the old position is to continue in this case.

**Officers of
the Political
Department**

Special Provisions in respect of the Political Department.—The provisions in respect of civil servants in general mentioned above do not apply† to persons wholly or mainly employed in connection with the exercise of the functions of the Crown in its relations with the Indian States. Those persons who were so employed before April 1, 1937, continue to hold their offices, and their old rights and privileges are safeguarded. These persons also hold office during His Majesty's pleasure.

**Protection of
existing
officers of
certain
Services**

Protection of Certain Existing Officers.—Only the Governor-General, exercising his individual judgment, and the Governor, exercising his individual judgment, can abolish a civil post held by a person who was a member before April 1, 1937, of A CENTRAL SERVICE CLASS I, CENTRAL SERVICE CLASS II, RAILWAY SERVICE CLASS I, RAILWAY SERVICE CLASS II, or a PROVINCIAL SERVICE, if the abolition of such a service adversely affects any such person. Similar provision is made regarding the making of any rule or order affecting adversely the pay, allowances or pensions, payable to or in respect of a person appointed before April 1, 1937, to CENTRAL SERVICE CLASS I, RAILWAY SERVICE CLASS I, or THE PROVINCIAL SERVICE. No order upon memorial submitted by any such person can be made except by the Governor-General or the Governor, as the case may be, exercising his individual judgment.

In relation to persons appointed to civil service by the Secretary of State, or in relation to a person who is an officer in His Majesty's Forces, the foregoing provisions apply subject to the condition that the above-mentioned powers of the Governor-General, or the Governor are to be exercised by the Secretary of State.:

The salaries and allowances of persons who were appointed before April 1, 1924, by some authority other than the Secretary of State, to a superior service or post, are charged on the Federal or the Provincial revenues according to the nature of their services. If, however, any such person is serving in connection with the railways in India, only that much of his salaries and allowances are to be charged on the Federal revenues as is not paid out of the Railway Fund. Any pension payable to such a person or the contribution of the Government to any provident fund or pension's fund in respect of such a person is also to be charged on the revenues of the Federation. These provisions also apply to persons holding superior posts, who retired before April 1, 1924.* The pension of a civil servant who has retired from His Majesty's service before April 1, 1897, is to be paid out of the Provincial revenues or the Federal revenues according to the nature of the service.†

In respect of certain officers serving in or before 1924

Special Provisions in respect of the Staffs of the High Commissioner and the Auditor of the Indian Home Accounts.—Persons who before April 1, 1937, were members of the staff of the High Commissioner for India or of the staff of the Auditor of Indian Home Accounts are also protected by the special provisions in this Act. Although they serve in England, yet these services are to be considered as if they are rendered in India. The appointments to the staff of the Auditor of Indian Home Accounts, however, must be made by the latter subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General given in his discretion.‡ The persons who were members of the staff of the High Commissioner for India or of the staff of the Auditor of the accounts of the Secretary of State in Council before the enforcement of this Act are to be kept in service, on not less favourable conditions in respect of service, remuneration or pension. The salaries, allowances and pensions of these persons are to be charged on the revenues of the Federation.§

Staffs of High Commissioner and Auditor of Indian Home Accounts

Conditions of Service of existing Staff

The Public Service Commissions.—The Act provides for a Public Service Commission for the Federation and for a Public Service Commission for each Province; but two or more Provinces may agree to have one Public Service Commission, or that the Public Service Commission for one of the Provinces shall serve the

The Federal Public Service Commission and the Provincial Public Service Commissions

* Sec. 259. † Sec. 260 (1). ‡ Sec. 251. § Sec. 252.

needs of all the Provinces. This agreement may contain the necessary incidental and consequential provisions. In the case of an agreement that a group of Provinces shall be served by one Public Service Commission, the agreement is to specify as to which Governor or Governors are to perform the functions of the Governor of a Province in relation to the Public Service Commission. If the Governor of a Province requests the Public Service Commission for the Federation, the latter may agree with the approval of the Governor-General to serve wholly or partly the needs of that particular Province.*

Appointment of the Chairman and the Staff

The chairman and other members of the Federal Public Service Commission are to be appointed by the Governor-General in his discretion. Similarly in the case of a Provincial Public Service Commission, they are to be appointed by the Governor in his discretion. In both the cases at least one half of the members are required at the dates of their appointments to have held office for at least ten years under the Crown in India. The number of members of the Commissions, their tenure of office, the conditions of service, and also the numbers of the staffs of the Commissions along with their conditions of service are to be determined by the Governor-General or the Governor in their respective spheres.†

Composition and Conditions of Service to be determined by the Governor-General or the Governor

Ineligibility for any other post

In order to assure independence and impartiality of the Commissions, it is laid down that the Chairman of the Federal Public Service Commission is not eligible for further employment under the Crown in India. The Chairman of a Provincial Public Service Commission is eligible for appointment as a Chairman or a member of the Federal Public Service Commission, or as a chairman of another Provincial Commission but not for any other post under the Crown in India. Lastly other members of the Federal or of the Provincial Commissions are not eligible for any other appointment under the Crown in India without the approval in their discretion of the Governor-General and the Governors in their respective spheres.‡

Duties and Functions of the Commissions

The Act confers the duty of holding examinations to the Services of the Federation and the Services of the Province on the Federal and the Provincial Public Service Commissions respectively. If a request is made by any two or more Provinces for the pur-

* Sec 264. † Sec. 265 (1 and 2). ‡ Sec. 265 (3).

pose, the Federal Public Service Commission is to assist those Provinces in framing and working schemes of joint recruitment for their Forest Services or any other Service.*

The Secretary of State, the Governor-General and the Governors, in respect of appointments made by them in their discretion, have the power to frame regulations showing the matters on which either generally, or in any particular class of case, or in any particular circumstances, a Public Service Commission may not be consulted. Subject to these regulations, the Federal and the Provincial Commissions are to be consulted on :†

(a) all matters relating to methods of recruitment to Civil Services and for civil posts :

(b) the principles for making appointments to Civil Services and posts, making promotions and transfers from one service to another and on the suitability of candidates ;

(c) all disciplinary matters including memorials or petitions in respect of a person in the civil employ of His Majesty in India :

(d) any claim by or in respect of a civil servant that expenditure incurred by him in defending legal proceedings instituted against him regarding acts done or purporting to be done in the execution of his duty should be paid out of the Federal revenues or the Provincial revenues, as the case may be ;

(e) any claim for the award of pension regarding injuries sustained by a person while in the civil employ of His Majesty in India and also the question as to the amount of that pension : and

(f) on any other matter which may be referred to them by the Governor-General or the Governor in their discretion.

A Public Service Commission, however, may not be consulted regarding the way in which appointments and posts are to be allocated between the various communities in the Federation or a Province, or in the case of the subordinate ranks of the various Police Forces in India in respect of methods of recruitment, principles for making appointments, promotions and transfers, and disciplinary matters.‡

Where the Commission may not be consulted

Where the Commissions are to be consulted

Communal proportions in the Services beyond the power of advice of the Commissions

* Sec. 256 (1 & 2). † Sec. 266 (3). ‡ Sec. 266 (4).

The Legislatures may extend the functions of the Commissions

Savings

Expenses charged on the revenues

Indemnity for past acts

Provision* is also made for the exercise of additional functions by the Federal Public Service Commission or by the Provincial Public Service Commissions by an Act of the Federal Legislature or the Provincial Legislatures, as the case may be. No Bill or amendment for the purpose, however, can be introduced or moved without the previous sanction of the Governor-General or the Governor in their respective spheres. Moreover such an Act is to provide that the additional functions conferred by it on the Commissions are not exercisable in respect of persons appointed by the Secretary of State, officers in His Majesty's Forces or holders of Reserved Posts except with the consent of the Secretary of State. And in the case of a Provincial Act, such additional functions are not to be exercisable in relation to a person who is not a member of the Provincial Service except with the consent of the Governor-General.

The expenses of the Commissions, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commissions are charged on the Federal and the Provincial revenues, as the case may be.

General Provisions in respect of the Services — Besides the above-mentioned provisions, some general provisions are included in the Act for indemnifying civil servants for duties done in the past, giving them protection against prosecution and suits, and also providing as to payment of certain pensions. In view of threats which were made in certain quarters, especially against the Police, the J. P. C. thought that it was justifiable to give a measure of protection to men who have done no more than their duty in very difficult and trying circumstances. It, therefore, agreed with the proposal of the White Paper that the civil servants should be granted a full indemnity against civil and criminal proceedings in respect of all acts done before the commencement of the Constitution Act in good faith, and done or purported to be done in the execution of duty.† A provision to this effect has, therefore, been introduced in the Act. It is laid down that no civil and criminal proceedings shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duties as a civil servant in India or Burma before the commencement of the Provincial

* Sec. 267. † Para 283.

and the Federal Parts of the Act, except with the consent of the Governor-General and of the Governor in their discretion in their respective spheres. Such proceedings, instituted whether before or after the enforcement of this Part of this Act, against a civil servant in India or Burma in respect of acts connected with his official duties must be dismissed, unless the court is satisfied that the acts complained of were not done in good faith. Where such proceedings are dismissed, the costs incurred by the defendant in so far as they are not recoverable from those persons who instituted the proceedings, shall be charged on the Federal revenues or the Provincial revenues according to the employment of the persons concerned.*

The civil servants continue to enjoy the protection against prosecution and suits afforded to them by Section 197 of the Code of Criminal Procedure and Sections 80 to 82 of the Code of Civil Procedure. No Bill or amendment to abolish or restrict the protection afforded to certain civil servants by these Sections can be introduced or moved in the Federal Legislature or the Provincial Legislature, without the previous sanction of the Governor-General in his discretion, or the Governor, in his discretion. The powers to sanction prosecutions and the determination of the court, the person, and the manner in which a public servant is to be tried, shall be exercised by the Governor-General exercising his individual judgment in case of a person employed in connection with the affairs of the Federation, and by the Governor exercising his individual judgment in the case of a person employed in connection with the affairs of a Province. This, however, does not restrict the power of the Federal or a Provincial Legislature to amend Section 197 of the Indian Code of Criminal Procedure with the previous sanction of the Governor-General or the Governor as mentioned above. Further, a provision is made that in case a civil suit is instituted against a public officer in respect of his official duties, the cost incurred by that officer, or any damages or cost ordered to be paid by him shall be charged on the Federal revenues or the Provincial revenues, if the Governor-General or the Governor, as the case may be, exercising individual judgment, order to that effect.†

Protection
against
prosecution
and suits

* Sec. 270. † Sec. 271.

Payment of certain Pensions

Exemption of these Pensions from taxation in India

Family Pensions Fund

The Order in Council

Provisions Regarding Pensions, etc.—The pension of persons who have served under the Governor-General in Council before the commencement of this Act, or after that date are officers in His Majesty's Forces, or have been appointed to a civil post in India by His Majesty or the Secretary of State, or hold reserved posts, shall be paid on behalf of the Federation or the Province by or according to arrangements made with the Secretary of State, if such persons are residing permanently outside India. This pension is exempt from all taxation in India.*

The Indian Military Widows and Orphans Fund, the Superior Services (India) Family Pension Fund, a Fund to be formed out of moneys contributed under the Indian Military Service Family Pension Regulations, and a Fund to be formed similarly under the Indian Civil Service Family Pension Rules, are to be vested in the Commissioners to be appointed under the authority of an Order in Council to be issued by His Majesty. This Order is also to provide for investment of the said Funds by the said Commissioners, for the remuneration of the Commissioners out of these Funds, and for the administration of these Funds in other respects by the Secretary of State. After the date specified in the Order, pensions payable under the rules shall be payable out of the proper Funds in the hands of the Commissioners. Such an Order is to provide that the balance in respect of these Funds in the hands of the Governor-General on the 31st of March after the passing of this Act, shall be transferred to the Commissioners before the passing of three years either all at one time or in instalments together with the prescribed interests. This period can be extended by His Majesty in Council. Before recommendation is made to His Majesty for the making of this Order, the Secretary of State is to consider any representations by any of the existing subscribers and beneficiaries. Moreover provision is to be made in this Order for the making of objections by the subscribers and beneficiaries to the vesting of any such Fund in the Commissioners. If such an objection is made in the proper way, the money representing the interest of the objector is not to be transferred to the Commissioners but is to be dealt with as part of the Federal revenues. The pension payable to or in respect

of such an objector shall be paid out of these revenues according to the rules to be made by the Secretary of State. Interest or dividends on these Funds vested in the Commissioners, as mentioned above, are exempt from income-tax in the United Kingdom. Estate duty cannot also be levied on them in Great Britain and in Northern Ireland, if the Parliament of that country so provides.*

The Indian Military Funds Act, 1866, the East India Annuity Funds, 1874, and the Bombay Civil Funds Act, 1882, are kept in force, but the Secretary of State in Council in respect of these Acts mean the Secretary of State, and the revenues of India mean the revenues of the Federation.†

It is expressly provided‡ in the Act that all civil servants in India hold office during His Majesty's pleasure. The tenure of office of such persons is safeguarded by the provision that no person who holds any civil post under the Crown in India can be dismissed from the service of the Crown by any authority subordinate to that by which he was appointed. Before such a person is dismissed or reduced in rank, he must be given a reasonable opportunity of showing cause against the action proposed to be taken in respect of him, provided action is not taken against him on the ground of conduct which has led to his conviction on a criminal charge, or where the proper dismissing authority is satisfied that for some reasons, to be recorded in writing, it is not reasonably practicable to afford an opportunity of showing cause to the person concerned. Although a person holding a civil post holds office during His Majesty's pleasure, yet any contract under which a person, not being the member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if that post is abolished before the agreed period, or that person is required to vacate that post for a reason other than any misconduct on his part.

The Ruler or a subject of a Federated State is eligible to hold any civil office under the Crown in

Certain
Funds Acts
kept in
force

Tenure of
office of
civil
servants

Protection
against
reduction
and dis-
missal

Payment of
Compensa-
tion.

* Sec. 273. † Sec. 274. ‡ Sec. 240.

**Eligibility
for office of
persons who
are not
British
subjects**

India in the Federal sphere. Although generally speaking a person who is not a British subject cannot hold any civil office under the Crown in India, yet the Governor-General may declare that the Ruler or any subject of a specified Indian State being not a Federated State, or any native of a specified tribal area or territory adjacent to India is eligible to hold any specified office. The Governor can do a similar thing in respect of a civil office in Provincial sphere while the Secretary of State may do so in respect of services to which he makes appointments. No non-British subject can hold any office under the Crown in India except subject to the above-mentioned provisions, but the Governor-General and the Governor, in their respective spheres, can authorise the temporary appointments for any purpose of such person. These functions are to be discharged by the Governor-General or the Governor, as the case may be, by the exercise of their individual judgment.* It is also provided that if an agreement is made for joint services and posts in respect of the Federation or the Provinces, a provision shall be made in it that the Governor-General or any Governor, or a Public Service Commission, shall exercise the functions of the Governor or the Provincial Public Service Commission if that service or post were a service or post in connection with the affairs of one Province only.†

**Rules under
the Act of
1919 kept in
force**

It should be clearly pointed out that the rules made under the Government of India Act, 1919, relating to the Civil Services are kept in force as far as they are consistent with the new Act, until some other provision is made.

**Sex is no
disqualification
for civil
service**

It is expressly declared in the Act that sex is no disqualification for appointment to any civil post in India except that which may be specified by any general or special order made by the Secretary of State, the Governor-General or the Governor in their respective spheres.

**Special re-
sponsibility
of Governor
General and
the Governor**

Lastly the Act makes it perfectly clear that any provision in the Act requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter regarding the Services does not derogate from their special responsibility for the protection of the legitimate interests of the Services.|| This means that the Governor-General and the Governor* in their respective spheres can interfere

* Sec. 262. † Sec. 263. ‡ Sec. 276. § Sec. 275, ¶ Sec. 277 (3)

regarding matters in respect of Civil Services whenever and wherever they think that the legitimate rights and interests of the Services are affected. This is, thus, a general overriding safeguard.

General Remarks.—Thus the rights and privileges of the Civil Services are amply safe-guarded. This preserves their charm for Britishers as well as Indians. This also gives them elements of stability and security which are absolutely essential, if the administration of the country is to go on smoothly.

This, however, does not satisfy the Indian point of view. Nationalist opinion in this country considers the Services as pampered, and desires the reduction of their rights and interests in respect of emoluments, allowances, etc., both from the economic point of view and the political point of view. From the economic point of view, it is urged that India cannot afford to pay such high salaries—the Indian Civil Service is the highest paid in the world, in view of the dire poverty of the masses and the urgent need of money for other nation-building activities. From the political point of view it is desired to make the Services national from the point of view of the outlook, control and recruitment. Under the new Constitution, this cannot be done except perhaps to a certain extent, and that too with the concurrence of the Governor-General and the Governors.

There is, however, one thing to be noted with gratification. Before the commencement of the new Constitution, there was mutual distrust. The Services were not sure if the new conditions of service would be congenial for them, while the Indian politicians were doubtful whether the Services would willingly offer their active co-operation for carrying out new policies, and whether they would be willing to change their outlook. During the brief period the Provincial Autonomy has been at work, these fears have been falsified and mutual distrust has vanished to a great extent. While the Indian politicians have shown greater sense of responsibility than was expected, and have taken a keen interest in protecting the honour and prestige of their administrative officers, the civil servants have adapted themselves to the new conditions with commendable readiness. It is only in very few cases, four or five, that some of the civil servants have found it difficult to serve under the new conditions.

Safeguards
give elements
of stability
and security

Indian
opinion
dissatisfied

Fears
Falsified

machine, nor is there any lowering down of the standard of administrative efficiency.

Need for
change

Yet, as matters stand legally, there is an urgent need of change both in the Provincial and the Federal spheres. The pays and emoluments of the Services must be related to the economic condition of the country, though opinions might differ regarding the maximum salary of Rs. 500 per mensem fixed by the Indian National Congress. In the Provincial sphere this must be done immediately. And in certain Provinces, notably Madras, steps towards this direction have already been taken. As for the All India Services,

"with rare exceptions, the Governor-General is empowered in all these matters relating to the superior services, to act in his discretion i.e., without reference to the Ministers. The bulk of the salaries, allowances, pensions, etc., are charged upon the revenues of the Federation, i.e., utterly outside the vote or discussion of the Indian Legislature. By this arrangement the Governor-General is not only made the most important single cog in the administrative system of India; his Ministers' power and importance, their authority and influence are diminished *pro tanto*."⁴

The vesting of the power of control, supervision, hearing of appeals and grant of redress and compensation, etc., ultimately with the Governor-General or the Secretary of State, and laying down of the general rule that the conditions of service of civil servants cannot be changed so as to give them less advantageous terms place the demigods of the Indian Services beyond the control and the reforming capacity of their real masters—the Indian masses and their representatives.

CHAPTER XVII

THE HOME GOVERNMENT OF INDIA

The Secretary of State for India and His Advisers

The Secretary of State for India in Council ; Advisers to Secretary of State ; Consequential Changes ; Contributions from the Revenues of the Federation ; Expenses of India Office ; The Secretary of State for India—Powers and Functions ; The High Commissioner for India ; The Auditor of Indian Home Accounts.

The Secretary of State for India in Council.—India is more or less a dependency of the British Crown and thus the authority of the King in Parliament is supreme over the Government of India. This authority has been exercised through, what has been called, the Home Government, consisting of highest executive authorities in England under whose control, guidance and supervision, the Central and the Provincial Governments in India have so far functioned. Up to 1784 the Court of Proprietors and the Court of Directors constituted the Home Government. The Pitt's India Act created the Board of Control, which through its President continued to exercise control over the Government of India on behalf of His Majesty's Government till the Mutiny. After the Mutiny the Government of India was transferred to the Crown ; the office of the President of the Board of Control was abolished and in his place, the Secretary of State for India and the Council of India were created. Henceforward the Secretary of State for India in Council was to superintend, direct and control all acts, operations and concerns which relate to the government, or the revenues of India. The Governor-General and through him the Provincial Governments were required to pay due obedience to his orders.

According to the J. P. C., the Secretary of State in Council was a body corporate with singular powers. The Council consisted of the Secretary of State and not less than eight and not more than twelve members of whom at least one-half were required to have served or resided in India for at least ten years. The

The Home Government of India

The Secretary of State for India in Council

The functions of the Secretary of State for India in Council

TO THE OFFICERS, NON-COMMISSIONED
OFFICERS AND MEN OF THE ROYAL AIR
FORCE, MORE ESPECIALLY TO THOSE
WHOM I AM PRIVILEGED TO CALL MY
FRIENDS, THIS BOOK IS IN GRATITUDE
AND ADMIRATION DEDICATED

PER ARDUA

THE RISE OF BRITISH AIR POWER 1911-1939

HILARY ST. GEORGE SAUNDERS

*The engine is the heart of an aeroplane,
but the pilot is its soul.*

WALTER RALEIGH



OXFORD UNIVERSITY PRESS
LONDON NEW YORK TORONTO

in Council, but these conditions cannot be more favourable than the conditions which would have applied to the person in question if he had retired from the establishment of the Secretary of State in Council.*

Contributions from the Revenues of the Federation.—It is provided that sums of money payable as superannuation, compensation, retiring or additional allowances or gratuities in respect of officers and servants transferred to the Department of the Secretary of State, and which may be determined by His Majesty in Council so as to represent the proportion for the service before the date of transfer shall be paid out of the revenues of the Federation. In fixing the sum no account shall be taken of any service before the date of transfer regarding which allowance or gratuity was payable out of moneys provided by the British Parliament if this Act had not been passed. If any person, being an officer or servant, on the establishment of the Secretary of State in Council, or of the High Commissioner for India or being the Auditor of the Accounts of the Secretary of State in Council or a member of the staff of the latter, and who has been transferred to the newly created Department of the Secretary of State, loses his employment on account of the abolition of his office or by any re-organization of the Department or of his office resulting from the operation of this Act, he shall be awarded by the Secretary of State any just compensation or any additional allowance or gratuity out of the revenues of the Federation of India. All the payments shall be charged on the revenues of the Federation. Any sums payable as pensions in respect of service before the commencement of the Provincial Part of the Act shall be paid from the revenues of the Federation of India and shall be considered as a charged expenditure. Lastly any sums which were paid before the passing of the Act from the revenues of India to or in respect of persons subscribing to the Regular Widows' Fund, the Elder Widows' Fund, or the India Office Provident Fund are to be paid from and charged on the revenues of the Federation of India.†

India Office
Provident
Funds

Expenses of India Office.—Regarding the expenses of India Office, the J.P.C. observed :

* Sec. 281. † Secs. 282, 283, 284.

"We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India, but that an annual grant in aid of £150,000 is made by the Treasury. This is a matter which ought, we think, to be considered, in connection with further changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service estimates of the United Kingdom, but that Indian revenues should contribute a grant-in-aid, in view of the functions which the Secretary of State and his Department will continue to perform on behalf of the Governments in India."

The Act, therefore, lays down that the salary of the Secretary of State and the expenses of his Department including the salaries and remunerations of the staff, shall be paid out of money provided by the British Parliament. Subject to the provisions mentioned above, the Secretary of State is authorised to appoint officers and servants, he may think fit, with the consent of the British Treasury as to numbers. These persons shall receive salaries or remuneration as may be determined by the Treasury. The Federation of India shall pay from its revenues to the British Exchequer such sums as may from time to time be agreed between the Governor-General of India and the British Treasury so as to cover the expenses of the Department of the Secretary of State in respect of functions performed on behalf of the Federation according to the agreement between the Secretary of State and the Governor-General.[†] Thus under these provisions the India Office has become a Treasury Office. The position was thus made clear in Parliament :—

"Its expenses will come from funds here and the Government of India will pay towards the cost of the India Office what may be termed agency expenses involved in any duty which the India Office has carried out either for the Federal Government or for the Provincial Governments. The proposal merely changes round the present plan. The present plan is that the expenses of India Office are paid out of the Indian Revenues but the Treasury makes a contribution in the form of a grant-in-aid from British Revenues. In future the Treasury will provide for the India Office, the Government of India making a contribution in respect of agency functions performed by the India Office for the Governments in India. In actual practice there will not be a great difference in the expenditure one way or the other."[†]

This is certainly the correct constitutional position as the Secretary of State for India is a member of the British Cabinet, responsible to Parliament and not a servant of the Federation of India. But in actual practice this will not make any great difference to

J.P.C.'s
Recommendation

India Office
Expenses to
be paid by
the British
Exchequer

Grant-in-aid
to be made
by the
Federation
of India

Correct
Constitutional
Position

* Para. 389. † Sec. 280. ‡ Parliamentary Debates, Vol. 300.
Col. 1010.

India from the financial point of view, as India shall have to make a similar contribution towards the expenses of the India Office in lieu of the agency functions performed on her behalf, as she was making before the changes introduced by this Act.

Legal Status of the Secretary of State for India

An important change

Powers of the Secretary of State for India

Curtailment

The Secretary of State for India - Powers and Functions. — Under the Government of India Act, 1919 "the Secretary of State was in the foreground and the Crown was in the background." This was in contravention of the practice of the Dominions which derive their executive and legislative power directly from the Crown, there being no place for the Secretary of State for the Colonies in the constitutional law of the Dominions. On the other hand the Secretary of State for India had a definite legal status under the Act of 1919. This status he continues to enjoy under the Act of 1935, but his position *cis-à-vis* the Crown has been reversed at least in theory. The territories in India and the executive authority of India are now vested in the latter and not the Secretary of State as before. This authority of the Crown, however, is to be exercised through and on the advice of the Secretary of State for India who is a member of the British Cabinet and thus shares his responsibility with other members of the British Government. "This is the fundamental change made in the legal position of the Secretary of State, though in substance his control remains unaffected."* As a result of this change the Secretary of State has been placed in his true position *cis-à-vis* the Crown and at least in this respect the constitutional law of India has been brought in line to a certain extent with the constitutional law of the Dominions.

In actual practice, however, the Secretary of State for India still continues to enjoy vast powers under the Act of 1945. As the doctrine of the British Parliament as Trustee of the teeming millions of India and responsible for their welfare and good government still holds the field, the Secretary of State for India who is the medium and the vehicle through which this responsibility works, cannot but occupy a very important position. The present Act guarantees him that, but as an attempt has been made in the Act to transfer a measure of responsibility for the government of the country to the elected representatives of the people, particularly in the Provinces, and to a lesser degree at the Centre,

the authority and powers of the Secretary of State had of necessity to be curtailed to that extent. Thus to the extent the government of India is made responsible to the Indians in India, the powers of the Secretary of State for India have been curtailed. A sort of reality has been given to this change by the Secretary of State for India refusing to accept responsibility for certain happenings in the Provinces when he was asked certain questions in the Parliament. It was made clear on his behalf that the members of the Parliament should understand that the Parliament has vested the Provincial Governments with responsibility in certain spheres and that the Executive of the Provinces were responsible to their Legislatures in those spheres and not to the British Parliament.

Yet the Secretary of State enjoys very substantial power under the Act of 1935. These powers and functions are manifold and are scattered in various Sections of the Act. The most important of his powers is his power of supervision, direction, and control over the Governor-General, and the Governors of the Provinces through the agency of the Governor-General, in the due discharge of their functions reserved to their discretion or subject to the exercise of their individual judgment. It is laid down in the Act:*

"In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him, by the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provision of this section."

Before giving any such directions the Secretary of State, however, is to—

"satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty."

Regarding the Provincial Governors, it is provided in the Act that in so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by the Governor General *in his discretion*, but the validity of anything done by a Governor shall not be called in question on the ground

Powers of supervision, direction and control over the reserved field

Position in respect of the Provincial Governors

* Sec. 14 (1 & 2).

that it was done otherwise than in accordance with the provisions of this Section. Like the Secretary of State in the federal sphere, the Governor-General before giving any such directions, shall satisfy himself that nothing in the directions requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty. It shall be noticed that in the latter case the instructions by the Governor-General are to be issued *at his discretion*. Here he is himself subject to the supervision and control of the Secretary of State. The last mentioned, therefore, indirectly controls the Provincial Governors in this sphere.

**Importance
of these
powers**

The importance of these powers will be realized when an idea is formed of the extent of the sphere reserved to the discretion or subject to the individual judgment of the Executive Heads—Provincial and Federal, in India. In the case of the federal sphere this brings the key Departments of Defence, External Relations, government of Tribal or Excluded Areas, and the Ecclesiastical affairs along with their financial implications, the vast field covered by the Special Responsibilities of the Governor-General, appointment, dismissal, and distribution of work among the Federal Ministers, supervision over Provincial Governors, affairs of the Indian ruling chiefs outside the federal sphere, all questions regarding paramountcy, and various other extra-ordinary powers regarding finance, legislation and the exercise of executive authority at his discretion or by the exercise of his individual judgment by the Governor-General. In the provincial sphere the vast area covered by the Special Responsibilities of the Governors and other functions subject to the individual judgment of the latter are subject to the indirect control of the Secretary of State.

The Secretary of State's powers regarding recruitment, Services and Posts, Orders in Council, legislation, borrowing, pensions, etc.

Besides, the Secretary of State possesses real powers regarding recruitment and the protection of the rights and privileges of certain services and posts, the issue of Orders in Council by His Majesty in Council, the exercise of His Majesty's powers to assent to, to withhold assent, or to disallow the Acts, passed by the Legislatures in India, financial powers regarding the borrowing in the United Kingdom on behalf of the Federal Government and the Provincial

Governments and the payment of certain pensions, etc., in Britain on behalf of the Government of India, the powers regarding contracts and other liabilities, audit of accounts including the appointment of the Auditor-General, powers regarding inter-provincial disputes in respect of water supplies, the exercise of control regarding the putting in force of the Emergency Powers by the Executive Heads, such as the issuing of Ordinances and the enactment of the Governor-General's and the Governor's Acts, the powers in respect of the special powers vested with the Governor-General and the Governors regarding the breakdown of the Constitution, and the power of granting leave to the Governor-General or the Governors during their terms of office.

This vast array of powers makes the Secretary of State the dominant authority of the Indian Constitution. Professor K. T. Shah writes :

" His powers may not be so imposing in appearance as those of the Governor-General or the Provincial Governors. But these are merely his creatures, obedient to every nod from the Jupiter of White Hall, amenable to every hint from this juggler of Charles Street. His powers extend not merely to matters of fundamental policy ; to the protection of British vested interests ; to the safeguarding of Britain's imperialist domination. They comprise even matters of routine administration, the more important doings of the Indian Legislature, and even the appointments, payment or superannuation of certain officers in the various Indian services or Governments. He has, in fact, all the power and authority in the governance of India, with little or none of its responsibility. " *

It is no use denying that from the point of view of Indian nationalism such a vast array of powers vested with the Secretary of State is not justified. Indian nationalist opinion takes it as an affront to their national self-respect and looks upon this as a mark of their political subservience. On the other hand, it may be noted, that under the scheme of the Act, some of these powers had to be vested with the Secretary of State. But if these powers are exercised rigidly, there is bound to be dissatisfaction in India which may lead to constitutional deadlocks and political stalemates. But if these powers are exercised with restraint and in the spirit that the Executive Authorities in India are to be made responsible to the Legislatures in India at least in actual practice, most of these powers will fall in disuse and the trouble will be avoided.

Dominant Authority

Nationalist Opinion

* Shah, K. T : Federal Structure in India, p. 286.

In this connection reference may be made to the understanding arrived at between the Congress Ministers and the Provincial Governors regarding the exercise of the Special Powers by the latter. To the extent and as long as this understanding is respected by the Governors, of course under the general control of and with the concurrence of the Governor General and through him of the Secretary of State, the direct powers of supervision and control of the Secretary of State over the Provincial Governors are kept in abeyance. If this state of affairs lasts for a long time, they may fall entirely in disuse, and it may not be possible to revive them later on. It is hoped that a similar understanding as that in the Provinces will be arrived at between the Governor-General and his Ministers, when the Federation comes into being. If this hope is fulfilled, similar results will be achieved in the federal sphere. In that case there will be a real transfer of power to the representatives of the people of India and corresponding curtailment of the powers of the Secretary of State for India.

The High Commissioner for India.—Another officer who works on behalf of the Government of India in Britain is the High Commissioner for India. The J. P. C. wrote :

" There has been a High Commissioner for India in London since 1920. Orders in Council framed under S. 29-A of the Government of India Act, make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject."*

Appointment

Thus the Act lays down that there shall be a High Commissioner for India in the United Kingdom who shall be appointed, and whose salary and conditions of service shall be prescribed by the Governor-General, exercising his individual judgment. He shall perform on behalf of the Federation such functions in connection with the business of the Federation and, in particular, in relation to the making of contracts, as the Governor-General may from time to time direct. He may also, with the approval of the Governor-General and on such terms as may be agreed, undertake to perform on behalf of a Province or a Federated State, or on behalf of Burma, functions similar to those which he performs on behalf of the Federation.

Functions

Working agreement in India

Regarding the duties of this officer, Sir Samuel Hoare stated in the Parliament :

" The High Commissioner will have two kinds of duties, one for the Federal Government and the Provincial Governments in India, and the other for the Governor-General acting in his discretion for the reserved departments and for the sphere of Government that does not come within the Federal Government of India. As the High Commissioner will have to act in these two capacities it was thought that the proper method of action was that it should be the individual judgment of the Governor-General, namely, that the initiative in suggesting names will be with the Ministers, but that the final word should be with the Governor-General."

It should be noted that no striking change has been made in the position, status, and functions of the High Commissioner for India. Although apparently he occupies a similar position as that of the High Commissioners for the Dominions, yet in actual practice there is a great difference between his status and position and those of the Dominion High Commissioners because the latter represent their Governments in London and act as the channel of communication between the Imperial Government and the Dominion Governments. Of course this difference is due to the inferior constitutional status of India in the British Commonwealth of Nations.

The Auditor of Indian Home Accounts.—Another important officer who shall work on behalf of the Government of India in London shall be the Auditor of Indian Home Accounts. His powers and functions have already been described in the Chapter on Federal Finance.

* Parl. Deb. Vol. 300, Col. 1100.

Duties

No c ge

Difference between the High Commissioner of India and the Dominion High Commissioners

CHAPTER XVIII

MISCELLANEOUS PROVISIONS AND CONSTITUENT POWERS

The Crown and the Indian States ; Functions of the Political Department ; Franchise and Elections ; Existing Law of India ; Death Sentences ; Restrictions on Internal Trade ; the Sheriff of Calcutta ; the First Elections to the Legislature ; Orders in Council ; Facilitating Transition ; the Amendment of the Constitution.

Rights and Obligations of the Crown in its relations with Indian States.

The Crown and the Indian States.—Nothing in this Act affects the rights and obligations of the Crown in relation to any Indian State. This is, however, subject to the provisions of the Instrument of Accession in the case of a Federated State. This means that this Act can operate in respect of a State only if it joins the Federation and that too in accordance with the provisions of the Instrument of Accession of that State. In the case of non-federating States, the Act does not touch the rights and obligations of the Crown in respect of them.*

Use of His Majesty's forces in connection with the discharge of the functions of the Crown in its relations with the Indian States.

It is provided† that if His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States requests the assistance of armed forces for the due discharge of those functions, it shall be the duty of the Governor-General, exercising the executive authority of the Federation, to cause the necessary forces to be so employed. The net additional expense incurred on account of this shall be considered to be expenses of His Majesty incurred in discharging the functions of the Crown in its relations with the Indian States. The Governor-General is enjoined to act in his discretion in carrying out these provisions.

The Functions of the Political Department.—Arrangements may be made between His Majesty's Representative for the exercise of the functions of the Crown in its relations with the Indian States and the Governor of any Province for the discharge by the Governor and the Provincial Officers of powers and duties in connection with the exercise of the functions of the Crown in its relations with the Indian States.‡

* Sec. 285. † Sec. 286. ‡ Sec. 287.

Franchise and Elections.—His Majesty in Council is empowered* to make provisions with respect to the following matters or any of them in so far as no provision has been made with respect to them in the Act :—

- (a) the delimitation of territorial constituencies for the purpose of elections under this Act ;
- (b) the qualifications of the voters and the preparation of electoral rolls ;
- (c) the qualifications for members of a Legislature ;
- (d) the filling of casual vacancies in a Legislature ;
- (e) the conduct of elections under this Act and the methods of voting at these elections ;
- (f) the expenses of candidates at such elections ;
- (g) corrupt practices and other offences at such elections.
- (h) the decision of disputes in connection with such elections : and
- (i) matters connected with any of these matters.

Existing Law of India.—Although the Government of India Act, 1919, is repealed, yet all the law in force in British India immediately before April 1st, 1937, continues in force in British India until altered, repealed or amended by a competent authority. † This is, however, subject to the other provisions of the Constitution Act. His Majesty may by Order in Council provide after the passing of this Act that from a specified date any law in force in British India shall have effect subject to necessary adaptation and modifications, which may be deemed necessary for bringing that law in harmony with the provisions of this Act and specially with those provisions which reconstitute governments and authorities in India and prescribe the distribution of legislative and executive powers between the Federation and the Provinces. No such law, however, can be made applicable to any Federated State by an Order in Council made under this Section. The word "law," as used above, does not include an Act of Parliament, but it includes any ordinance, order, bye-law, rule or regulation having the force of law in British India.‡

To remain in force

Adaptation of existing Indian Law

Death Sentences.—A special provision* has been inserted in the Act in respect of death sentences. In the case of a person sentenced to death in a Province, the Governor-General in his discretion is vested with all the powers of suspension, remission or commutation of sentence as were vested in the Governor-General in Council before April 1, 1937. With this exception, no authority in India outside a Province has any power to suspend, remit or commute the sentence of any person convicted in the Province. This, however, does not affect any power of any officer of His Majesty's forces to suspend, remit or commute a sentence passed by a court martial. The right of His Majesty, or of the Governor-General, if any such right is delegated to him by His Majesty, to grant pardons, reprieves, respites, or remissions of punishments is not touched by anything in this Act.

Restrictions on Internal Trade.—No Provincial Legislature or Government has the power† to pass any law or to take any executive action prohibiting or restricting the import or export from the Province of any kind of goods. They cannot impose any tax, cess, toll, or duty which has the effect of discriminating in favour of the goods produced in the Province, or which in the case of goods produced outside the Province, has the effect of discriminating between goods manufactured in one locality as against similar goods produced in another locality. Any law, which is passed contrary to this provision, shall be invalid to the extent of the contravention.

The Sheriff of Calcutta.—There is a special provision‡ in the Act in respect of the Sheriff of Calcutta. He is to be appointed annually by the Governor of Bengal from a panel of three persons to be nominated by the Calcutta High Court at the time of each vacancy. He shall hold office during the Governor's pleasure and shall receive remuneration determined by the Governor. The Governor shall exercise his individual judgment in exercising his powers regarding the appointment and dismissal of the Sheriff and the determination of his remuneration.

The First Elections to the Legislatures.—It is provided§ that for the purposes of the first elections to the Federal Legislature and the Provincial Legislatures,

Saving in
respect of
court martial

Not Allowed

Office during
the
Governor's
pleasure

*Sec. 295. †Sec. 297. ‡Sec. 303. §Sec. 307.

no person shall be subject to any disqualification by reasons only of the fact that he holds any office of profit as a non-official member of the Governor-General's or the Governor's Executive Council, or as a Provincial Minister, or that he holds an office which is not a whole-time office remunerated either by salary or by fees.

Removal of
Disqualifica-
tions

Orders in Council.—Any power conferred by this Act on His Majesty in Council can be exercised only by Order in Council.* A prescribed procedure is to be followed for making any such Order. The Secretary of State is to lay before Parliament the draft of any proposed Order. No further proceedings shall be taken in relation to that Order except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Order may be made either in the same form or with certain amendments. This is subject to the provision that if at any time when the Parliament is dissolved or prorogued or is adjourned for more than fourteen days, and the Secretary of State considers that on account of urgency an Order in Council should be made at once, the draft of the Order may not be laid before Parliament. Such an Order, however, shall cease to have effect at the expiration of twenty-eight days after the first meeting of the House of Commons after the making of the Order unless in the meanwhile the Order is approved by resolutions passed by both Houses of Parliament. Subject to any provision of this Act, His Majesty in Council, following the same procedure as described above, may by a subsequent Order revoke or vary any Order previously made by him.

Procedure

Powers of
the Secretary
of State at
a time of
urgency

Varying an
Order

The provisions of this Section do not apply to any Order of His Majesty in Council made in connection with any appeal to His Majesty in Council, or to any Order of His Majesty in Council sanctioning proceedings against an ex-Governor-General, or an ex-Representative of His Majesty for the exercise of the functions of the Crown in its relations with Indian States, or an ex-Provincial Governor, or an ex-Secretary of State.

Savings

Facilitating Transition—A special provision is made for facilitating the transition from the provisions of Part XIII of this Act viz., the transitional provisions, to the provisions of the Part II of this Act viz., the provision in respect of the establishment of the Federation. For this purpose His Majesty

*Sec. 309. +Sec. 310.

Adaptations
and Modifi-
cations

Making
money
available

Time Limit

Supremacy
of the
British
Parliament

Amend-
ments
through
Orders in
Council

may by Order in Council direct that the Act of 1935 and any provisions of the Government of India Act, 1919 still in force shall have effect subject to specified modifications and adaptations during a specified limited period. He may make during the specified limited period the necessary temporary provisions ensuring that during the period of transition and the period following it, sufficient revenues are available to all governments in India and Burma to enable the business of those governments to be carried on. He may make such other temporary provisions for the purpose of removing any such difficulties as mentioned above as may be specified in the Order. No Order in Council in relation to the transition as described above shall be made under this Section after the expiration of six months after the establishment of the Federation, and no other Order in Council shall be made under this Section after the expiration of six months after April 1st 1937.

The Amendment of the Constitution.—The new Constitution of India seems to have the impress of finality. No provision has been made for its change from within. Under the Act of 1935 the Indian Legislatures—the Federal as well as the Provincial, are subordinate law-making bodies subject to the supreme legislative power of the British Parliament. Whatever powers these Legislatures enjoy, they are conferred on them by a grant by the British Parliament under the Act. The powers of a constituent assembly are not conferred on the Legislatures in India, which, therefore, cannot alter or amend the Constitution except as regards extension of the jurisdiction of the Federal Court.* The power of altering or amending this Constitution vests in the British Parliament, though in respect of a number of minor matters amendments are permitted by Orders in Council, issued in the prescribed manner with the assent of the British Parliament after resolutions are passed to the effect by the Federal or the Provincial Legislatures after the expiration of ten years from the establishment of the Federation or the inauguration of Provincial Autonomy as the case may be.

The matters in respect of which amendments may be made are as under :—

(a) the provisions relating to the size or composition of the Chambers of the Federal Legislature, or the method of choosing or the qualifications of members of that Legislature. The proportion between the number of seats in the Council of State and the number of seats in the Federal Assembly, however, cannot be varied, nor can the proportion between the number of seats allotted to British India and the number of seats allotted to Indian States in the Council of State or the Federal Assembly be varied; (b) the provisions in respect of the number of Chambers in a Provincial Legislature, or their size or composition, the method of choosing or the qualifications of members of such a Legislature; (c) providing that in the case of women literacy shall be substituted for any higher educational standard as a qualification for the exercise of franchise, or providing that qualified women shall be entered in electoral rolls without any application; and (d) the provisions relating to the qualifications of voters.

Although these matters are of minor importance, yet the procedure laid down in the Act for carrying through the amendments in respect of them is far from simple. In the first instance, the Federal Legislature or a Provincial Legislature, on motions moved by a Minister on behalf of the Government, should pass a resolution commanding the required amendment of this Act or of an Order in Council made under it. Then these Legislatures, on motions moved in the same way as mentioned above, should present to the Governor-General or the Governor, as the case may be, an address for submission to His Majesty praying that the resolution may be communicated to Parliament. After this, the Secretary of State for India, within six months after the resolution has been so communicated shall cause to be laid before Parliament a statement of the proposed action.

When any such resolution and address, as mentioned above, are forwarded to the Secretary of State, the Governor-General or the Governor, as the case may be, shall send with them a statement of his opinion on the proposed amendment and particularly the effect it would have on the interests of any minority, and also a report of the views of the minority affected by the proposal, and whether a majority of

Matters in
respect of
which
amendment
are permiss-
ble

Procedure

Safeguard
for the
interests of
the
Minorities

the representatives of that minority in the Federal, or the Provincial Legislature, as the case may be, support the proposal. This statement and report shall be laid before Parliament by the Secretary of State. In discharging these functions, the Governor-General or the Governor, as the case may be, is to act in his discretion.

Time limit

There is also a time limit for these amendments. Except in the case of a resolution of the Provincial Legislature in respect of an amendment of the kind mentioned in (c) above *viz.*, regarding the franchise qualifications for women, no amendment can be moved before the expiration of ten years after the inauguration of the Provincial Autonomy in the case of a resolution of a Provincial Legislature and ten years after the establishment of the Federation in the case of a resolution passed by the Federal Legislature. His Majesty in Council, however, can at any time, whether any condition above referred to has been satisfied or not, make any amendment in respect of the matters mentioned above. This is subject to the provision that if no address, as mentioned above, has been submitted to His Majesty, the Secretary of State before laying the draft of the proposed Order in Council before Parliament shall ascertain the views of the Governments and the Legislatures in India which would be affected by the proposed amendment, and also the views of any minority likely to be affected, and whether the majority of the representatives of the minority concerned in the Federal, or as the case may be, in the Provincial Legislature, support the proposal. This may not be done, if the Secretary of State is of opinion that the proposed amendment is of a minor or drafting nature. But the provisions of Part II of the First Schedule to this Act dealing with the representation of the States in the Federal Legislature cannot be amended without the consent of the Ruler of any State that is affected by it.*

Power of
His Majesty

Saving in
respect of
the States

On a careful examination of this provision, it will be noticed that matters in respect of which amendment is made possible are of minor importance except perhaps the membership of the Legislatures. The latter was determined by the Communal Award

which had a mixed reception in India and is still resented by an important section of public opinion in this country. No change, however, can be made in this matter before the expiry of ten years from the inauguration of the Provincial Autonomy in the case of the Provinces, and before the expiry of ten years from the establishment of the Federation in the case of the Federation. The procedure laid down in respect of amendments regarding these matters is very elaborate and cannot be easily adopted.

No change
in the
Communal
Award
before the
expiry of ten
years

CHAPTER XIX

THE TRANSITIONAL PROVISIONS

The Transitional Period ; the Executive Government ; Control of the Secretary of State ; Sterling Loans ; the Legislature ; Provisions as to certain Federal Authorities ; Rights and Liabilities of the Government of India ; Repeal ; Commencement of the Act.

Provision for the transitional period

The Transitional Period—The Government of India Act, 1935, contains a scheme of Provincial Autonomy as well as a scheme for the Federation of India. It was clearly understood that although both these schemes were to go together in one Act, yet they were not to be enforced at the same time. Provincial Autonomy, *viz.*, the changes in the Provinces, was to be introduced earlier, and then the Federation was to follow. Thus the Provincial Autonomy has been introduced by the commencement of the Part III of the Act on April 1st, 1937. The Federation of India is still hanging fire. Thus there is a transitional period after which the whole Act is to come in force. The Act itself makes provisions for this transitional period.

Executive authority to be exercised by the Governor-General in Council

The Executive Government.—During this transitional period, the executive authority, as is mentioned below, is to be exercised on behalf of His Majesty by the Governor-General in Council directly or through subordinate officers. The Indian Legislature, however, is not forbidden from conferring functions upon subordinate authorities. This provision does not transfer to the Governor-General in Council any functions conferred by any existing Indian law on any court, judge or officer, or any local or other authority.* Subject to the provisions of this Act which are in force, the executive authority mentioned above includes matters with respect to which the Indian Legislature has power to make laws, the raising in British India on behalf of His Majesty of naval, military or air forces and the governance of His Majesty's forces borne on the Indian establishment, and the exercise of such rights, authority and jurisdiction as are exercisable by His Majesty by treaty, grant, usage, sufferance or otherwise in rela-

The extent of the executive authority

* Sec. 313 (1).

tion to the Tribal Areas. The said authority, however, does not extend in any Province to matters regarding which the Provincial Legislatures has power to make laws, except as is clearly provided in the provisions of this Act for the time being in force, and to the enlistment or enrolment in any force raised in British India of any person who is neither a subject of His Majesty, nor a native of India, nor of territories adjacent to India. It is also provided that commissions in such forces shall be granted by His Majesty, except in so far as he may be pleased to delegate his power under the provisions of this Act or otherwise.*

It is clearly stated that references in those provisions of the Act, which have been put into force, to the Governor-General and the Federal Government mean references to the Governor-General in Council, except in respect of matters regarding which the Governor-General is required to act in his discretion. Similarly any reference to the Federal Government or the Federation, except where the reference is to the establishment of the Federation, means a reference to British India, the Governor-General in Council, or the Governor-General, as the circumstances and the context may require. In the same way the revenues of the Federation means the revenues of the Governor-General in Council, which, subject to the provisions of the Act with respect to the assignment of the whole or part of the net proceeds of certain taxes and duties to the Provinces and also the provisions with respect to the Federal Railway Authority if they are in force, include all revenues and public moneys raised or received either by the Governor-General in Council or by the Governor-General. The expenses of the Governor-General in respect of matters regarding which he is to act in his discretion are to be defrayed out of the revenues of the Governor-General in Council.† The provisions that the Governor-General shall exercise individual judgment with respect to any matter shall not come into force until the establishment of the Federation. But although Part II of the Act, *viz.*, regarding the Federation, has not come into operation, yet the provisions requiring the previous sanction of the Governor-General for certain

Grant of
Commissions
in His
Majesty's
Forces

The Gover-
nor-General
and the
Federal
Government
mean the
Governor-
General in
Council

The Federa-
tion means
British India

Revenues of
the Federa-
tion means
revenues of
the Govenor-
General in
Council

Provisions
in respect of
the exercise
of individual
judgment do
not come
into force

* Sec. 313 (2). † Sec. 313 (3).

Certain provisions regarding the previous sanction of the Governor-General in respect of certain matters to come into operation

Special Responsibilities

General control of the Secretary of State

Directions of the Secretary of State

Direction of the Secretary of State regarding any grant or appropriation

The number of the Advisers of the Secretary of State

The Governor-General in Council cannot contract sterling loans. The borrowing power of the Secretary of State. Such loans are from Indian

legislative proposals, the provisions relating to broadcasting, provisions relating to directions to and the principles to be observed by the Federal Railway Authority, and the provisions relating to Civil Services to be recruited by the Secretary of State have effect in relation to Defence, Ecclesiastical Affairs, External Affairs and the Tribal Areas as if the Governor-General is required to act in his discretion. Also any reference in the provisions of this Act for the time being in force to Special Responsibilities of the Governor-General means Special Responsibilities which he will have when the II Part of this Act comes into force.* This Section does not confer on the Governor-General in Council any function of the Crown in its relations with the Indian States.†

Control of the Secretary of State.—The Governor-General in Council or the Governor-General is subject to the general control of the Secretary of State in matters with respect to which he is to act in his discretion and also other matters. He must comply with the directions given to him from time to time by the Secretary of State. The validity of any thing done by the Governor-General in Council or the Governor-General, however, cannot be called in question on the ground that it was done otherwise than in accordance with these provisions.

The Secretary of State cannot give any direction to the Governor-General in Council with respect to any grant or appropriation of any part of the revenues of the Governor-General in Council except with the concurrence of his Advisers. During the period of transition the number of these Advisers cannot be more than twelve or less than eight. On the establishment of the Federation, such of them as the Secretary of State may direct shall cease to hold office.‡

Sterling Loans.—During this transitional period, the Governor-General in Council cannot contract any sterling loan: but if it is so provided by the Parliament, the Secretary of State may within the prescribed limit contract such loans on behalf of the Governor-General in Council. The Secretary of State cannot exercise this power of borrowing unless the same is approved by a majority of his Advisers present at the meeting. These loans are free from any Indian taxation and are to be considered as Trust

Stocks. Any legal proceedings in respect of these loans may be brought in the United Kingdom against the Secretary of State, but no liability can be imposed in respect of them on the Exchequer of the United Kingdom.*

Legal proceedings against the Secretary of State

The Legislature.—The Indian Legislature is to exercise the powers of the Federal Legislature under this Act. Thus the Indian Legislature and its laws are to be taken to mean the Federal Legislature and the Federal laws respectively. The Federal taxes are also to mean taxes imposed by laws of the Indian Legislature. The Indian Legislature is not empowered by these provisions to limit the powers of the Governor-General in Council to borrow money.†

Exercise of powers of the Federal Legislature in respect of legislation and taxation

Provision is made for the continuance of certain provisions of the Government of India Act, 1919, with certain amendments consequential on the provisions of the new Act. These provisions are given in the Ninth Schedule to the Act.‡

Certain provisions of the Government of Indian Act, 1919 to continue in force

Provisions as to certain Federal Authorities.—It is provided that even before the Federation has been actually established, the Federal Court, the Federal Public Service Commission, and the Federal Railway Authority may be established. They shall perform similar functions in relation to British India as they are to perform in relation to the Federation when it is established. This, however, does not affect any power of His Majesty in Council to fix a date later than the commencement of Part III of this Act, i.e., April 1st, 1937, for the coming into force either generally or for particular purposes any of the provisions in respect of the Federal Court, the Federal Public Service Commission, or the Federal Railway Authority. Under this provision the Federal Court and the Federal Public Service Commission have already been brought into existence.§

The Federal Court, the Federal Railway Authority and the Federal Public Service Commission may be established even before the Federation itself is established

Rights and Liabilities of the Government of India.—The rights and liabilities of the Governor-General in Council or the Governor-General, during the transitional period, shall become the rights and liabilities of the Federation when it is established. Any legal proceedings by or against the same authority shall be continued by or against the Federation after its establishment. These provisions also apply to the

Rights and Liabilities

Proceedings etc.

* Sec. 315. † Sec. 316. ‡ Sec. 317. § Sec. 318.

Rights and liabilities of the Secretary of State

rights and liabilities of the Secretary of State in Council, which under the provisions of this Act have become rights or liabilities of the Governor-General in Council.*

Repeal of the Government of India Act, 1919 except the Preamble

Repeal.—The Act repeals the Government of India Act, 1919, except the Preamble attached to it. The latter stands with the new Act bearing testimony to the intentions of the Parliament regarding the constitutional progress of India.†

Date of the establishment of the Federation

Commencement of the Act.—It is provided in the Act that Part II of the Act, pertaining to the Federation of India, shall come into force on the date which His Majesty may appoint by the Proclamation establishing the Federation. The remainder of the Act, *viz.*, pertaining to the changes in the Provinces and some other provisions, was also to come into force on the date to be appointed by His Majesty in Council. If His Majesty in Council considers that all these provisions of the Act, which are to come into force on a particular date, cannot conveniently be brought into operation on that date simultaneously, he may fix any other date—earlier or later than the date referred to above, for coming into force of any particular provisions of the Act for general or for particular purposes.‡

Date of the introduction of the Provincial Autonomy

In pursuance of the above, Part III of the Act, pertaining to the Provinces, was brought into force on April 1, 1937, while no date has yet been fixed for coming into operation of part II of the Act by which the Federation of India will be established.

Commencement of the Act

* Sec. 319, † Sec. 478, ‡ Sec. 477.

CHAPTER XX

THE CONSTITUTIONAL STATUS OF INDIA

No Declaration of Dominion Status ; British View ; Difference between the Indian and the British Views ; The Preamble to the Act of 1919 ; the Position under the Act of 1935 ; A Potential Dominion ; An Autonomous Unit of the Empire ; India and the Home Government ; India and the Dominions ; the International Status of India.

No Declaration of Dominion Status.—What change does the Government of India Act, 1935, introduce in the constitutional status of India *vis-à-vis* Britain, the Dominions, and the other countries outside the British Empire? It is not very easy to give a precise answer to this question. Yet it is not difficult to give a negative answer that, strictly speaking, the Act does not introduce any change in that respect. Legally and constitutionally the position is as it was after the passing of the Act of 1919. It has already been stated that in spite of a strong demand and at the cost of a great resentment and misgiving in India, the declaration of "Dominion Status" as a goal for India was not included in the Act. It was, however, stated on behalf of the British Government that there was no intention on their part to go back upon the British promises regarding Indian constitutional development, and that they stood by the Declaration of August 20, 1917, which made it clear that it was the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of self-governing institutions with a view to the progressive realization of Responsible Government in British India as an integral part of the Empire. In 1929, Lord Irwin interpreted the Responsible Government in respect of India, as used in the Declaration as under :—

"In view of the doubts which have been expressed both in India and Great Britain regarding the interpretation to be placed on the intentions of the British Parliament in enacting the Statute of 1919. I am authorized on behalf of His Majesty's Government to state clearly that in their judgment it is implicit in the Declaration of August, 1917, that the natural issue of India's constitutional progress as there contemplated is the attainment of 'Dominion Status.'"

In India, therefore, the Declaration of August 20, 1917, was taken as having recognized the right of India

No Going back on the Declaration of August 20, 1917

Lord Irwin's Interpretation

Indian Ex-
pectations

to the attainment of Dominion Status as an ultimate goal, and it was expected that the new Act would not only expressly recognize that but would also take a very big step towards it.

British View.—In 1931 after the coming to power of the National Government, things seemed to have changed. Some of the conservative British politicians considered the Declaration of 1917 a mistake and the interpretation of 1929 doubly so. They thought that Responsible Government of the British type could not succeed in India and that a special type suited to different Indian conditions ought to be devised, but there could be no going back on the Declaration of August 20, 1917. So the British Government declared that it had every intention to act upon it. But then the Responsible Government as it worked in the Dominions in 1917, and which was understood to have been promised to India in the Declaration of 1917, and the Dominion Status were almost interchangeable terms in 1917 as the conception of the latter had not as yet fully developed and its implications were not yet fully clear. After the passing of the Statute of Westminster of 1931, the conception, incidents, and implications of Dominion Status were crystallized, and it came to mean much more than the British statesmen were prepared to grant or promise to grant to India even as a goal in 1935. Mr. Churchill explained that

Mr.
Churchill's
View

"India during the Great War had attained Dominion Status as far as rank, honour, and ceremony was concerned, but he did not foresee any reasonable time within which India could have the same constitutional freedom as Canada. The sense in which Dominion Status was used ten or fifteen years ago did not imply, in his view, Dominion structure or Dominion rights."^{*}

No raising
of false
hopes.

Difference Between the Indian and the British Views. Thus a position was created when the politically advanced Indians demanded and hoped for full Dominion Status as defined by the Statute of Westminster of 1931, while the British Government understood their promises to mean Dominion Status as understood in 1917, viz., Dominion Status with reservations and limitations. The latter, therefore, fought shy of including this phrase in the new Act as it did not want to raise false hopes. So to the utter disappointment of the Indians and the friends of Indian aspirations, no mention of Dominion Status

* Keith, A. B.: Constitutional History of India, page 469.

for India even as a goal was made in the Government of India Act, 1935.

The Preamble to the Act of 1919.—But the British Government stands by its promises. It persuaded the Parliament to retain the Preamble to the Act of 1919 while repealing the Act itself. Thus the Preamble to that Act stands as a witness to the intentions of the British Parliament in respect of the ultimate constitutional goal of India, which is "the progressive realization of Responsible Government in British India, as an integral part of the Empire."

The Position under the Act of 1935.—Thus the Government of India Act, 1935 does not introduce any change in this respect. It leaves things as they were. As a matter of fact, it does not attempt to define the constitutional status of India. It does not confer full Dominion Status on India. Viscount Halifax stated in the Parliamentary Debates :—

" It is quite clear that no Bill can confer Dominion Status. No Parliamentary Bill would have power to do that in the sense of performing a unilateral or arbitrary act, because India has to overcome her own obstacles and it is at once a privilege and opportunity to help her to do so, and we are pledged to give her all help in that direction. I was a little surprised to hear the Noble Marquess state that he rather questioned whether there were any pledges as between us and India, but I would assert that this Bill and the Instrument of Instructions taken together undoubtedly establish conditions under which it is possible for India to move steadily forward to that full Responsible Government that we have promised to her, and of which the natural issue has been declared to be Dominion Status."

A Potential Dominion.—Then, what is the present status of India? It is not easy to answer. Yet a number of answers have been given. Those, who decry the Government of India Act, 1935, are quite clear that India remains a dependency as before. Strictly speaking, this seems to be true. But it is equally clear that though no definite attempt is made to define the status of India as anything else, yet India is not treated merely as a dependency. At least in practice it is something much more than that. It has been said that India is 'a potential Dominion,' though she is not yet one. She enjoys 'Dominion Status in action' without having been recognized as one. She virtually enjoys the status of a Dominion but without the structure or rights of a Dominion. Lastly it has been suggested that she enjoys Dominion Status without its functions. All

Intentions
of the Par-
liament.

No Domi-
nation Status

Viscount
Halifax's
Explaina-
tion.

Indian Ex-
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Intentions
of the Par-
liament.

No Domi-
nation Status

Viscount
Halifax's
Explaina-
tion.

exercised through the Secretary of State for India, who is a member of the British Government. Under the provisions of the Act, the responsibility of the Secretary of State for India to the Parliament and to his colleagues of the British Cabinet is lessened only to the extent it is shifted on to the Indian Ministers. For the remaining sphere, which covers a very vast field comprising the Reserved Departments at the Centre and all the powers subject to the exercise of the discretion and the individual judgment of the Governor-General and the Provincial Governors, the Secretary of State is directly responsible to the Parliament and to his colleagues of the Cabinet. The Home Government can very effectively control the working of the Government of India at least in this sphere. It can directly control and determine the Foreign Policy and the Defence Policy of India, and through the various safeguards provided in the Constitution Act, it can determine the financial policy, the industrial policy, banking and railway policy of the country. The Services can look up to it in the ultimate resort for protection. Moreover the scheme of the Act is devised in such a way that the Home Government can through the Secretary of State, and the latter through the Governor-General and the Governors can, whenever he likes, reduce the powers of the responsible Indian ministers to insignificance. Thus the authority of the Home Government over the Government of India is still real.

India—an important autonomous unit of the Commonwealth

India and the Dominions.—The position of India *vis-à-vis* the other Dominions of the British Commonwealth is also not very satisfactory. India is an important autonomous unit of the Commonwealth and is regarded as such by the Dominions. Under the provisions of the Act, India can communicate with the Dominions on the basis of equality. She can have trade relations with the Dominions as an autonomous unit of equal status. Yet the inferiority of India's status in the Empire and the lack of power of complete self-government in her internal affairs is understood by the Dominions and the Colonies and is reflected in their treatment of India and her nationals.

The Dominions are strictly controlling immigration specially of the Asiatics including the Indians. This rules out any intimate association between them and India. Indians now cannot settle down

as citizens of equal status in the self-governing Dominions like the Union of South Africa, the Commonwealth of Australia, New-Zealand and Canada. This is certainly denying India and her nationals a place in the Empire which is their due. In South Africa, in particular, the problem is assuming alarming proportions. The racial feeling is working to the detriment of India's interests and even the Government of India is helpless. Only recently the Union Government has passed the Asiatic Land Bill, which aims at barring Indians from buying land in certain localities in South Africa. This has caused great resentment among the Indians settled in South Africa and the people in this country.

Anti-Indian Policy of the Dominions

India now controls the immigration of her nationals to the British Colonies. It is only under fair conditions that it is permitted to Malaya and Ceylon. In the latter country Indians are not being well treated. Franchise is refused to them except after five years' residence and proof of intention to settle down in the country. At present it is proposed to turn out of work some thousands of Indian labourers and to repatriate them to India. In Zanzibar an attempt was made to strike at the economic interests of the Indians. In Kenya and Fiji the Indian nationals are not treated on a footing of equality. It is a pity that although India is an integral part of the British Empire, yet the treatment given to her people by the other members of the same Empire is far from satisfactory. She does not discriminate in any way against the people of these Dominions, and yet the latter are not willing to concede the enjoyment of full civil rights to her people. This is causing great resentment in India. Moreover it is being increasingly felt that as things stand she cannot get any justice from the Dominions and that her status *vis-a-vis* the Dominions cannot be improved unless there is an improvement in her status as a member of the Empire. Only the other day, Pt. Jawahar Lal Nehru expressed himself strongly on the point in the following words:—

Treatment of the Indian nationals in the Colonies

"India is weak to-day and cannot do much for her children abroad, but she does not forget them, and every insult to them is a humiliation and sorrow for her. And a day will come when her long arm will shelter and protect them and her strength will compel justice for them. Even to-day in her weakness the will of her people cannot be ultimately ignored."*

The International Status of India.—India is not a sovereign state. She is not so even in the sense and to the extent the Dominions of the British Commonwealth claim to be, as the Statute of Westminster, 1931, does not apply to her. She cannot claim the equality of status with Britain and the Dominions. The question of possessing the rights of secession and neutrality, as claimed by some other Dominions, does not arise in her case at all. Thus India is not known to international law, and her nationals cannot claim in foreign countries any rights as Indians but can do so as British citizens. The foreign relations of India are controlled by the British Government, and whenever any question arises, the Government of India acts through the British Government.

India and the League of Nations.—It may, however, be pointed out that India is an original member of the League of Nations, and is a signatory to the Covenant of the League. She was also represented in the Peace Congress of 1919. All this implies sovereign autonomous status which, however, is not enjoyed by India. The separate representation conceded to India is rather premature. According to Professor Keith,¹ the position of India in the League is frankly anomalous, as her policy is determined by the British Government.

In conclusion, it may be stated that India is not yet a Dominion, but is on the way to become one. She is passing through a transitional period and, it is hoped, will attain Dominion Status in the long run. But only in the long run !

India is not known to international law

Period of Transition

¹ Keith, A. B. "A Constitutional History of India," p. 473.

CHAPTER XXI

PROVINCIAL AUTONOMY IN ACTION

Retrospect and Prospect

Inauguration of Provincial Autonomy ; The Congress and Office Acceptance ; The Congress Demand ; A Gesture of Goodwill ; Invitations and Breakdown ; Explanation by Mahatma Gandhi ; The Constitutional Crisis ; The Interim Ministries ; Need for Action ; The Constitutional Controversy ; The End of the Crisis ; The End of the Interim Ministries ; Implications of the Understanding ; The Great Change ; The Congress Ministries in Action ; Small Salary for the Ministers ; The Problems before the Ministries ; The Work of the Congress Ministries ; In the United Provinces ; In Central Provinces and Berar ; In Bombay ; In Bihar ; In Orissa ; In Madras ; In Assam ; In North-West Frontier Province ; Non-Congress Ministries ; In Sind ; In Bengal ; In the Punjab ; The Achievement of Provincial Autonomy ; Problems of Provincial Autonomy ; Provincial Finance ; The Governors and the Ministers ; The Legislatures ; Party Changes ; The Ministerial Parties and the Opposition ; No Political Parties ; The Communal Problem ; The Public Services ; Provincialism ; Provincial Parties and High Commands ; The Ministries and the Congress Organizations ; The Unsolved Problems ; Limitations of Provincial Autonomy ; the Future.

Inauguration of Provincial Autonomy.—The Provincial Part of the Government of India Act, 1935, came into force on 1st April, 1937. Provincial Autonomy was inaugurated in the Provinces on that date. On the invitation of the Governors, Councils of Ministers were formed by the leaders of the majority parties in the Provinces of the Punjab, Bengal, Sind, Assam, and North-West Frontier Province, where the non-Congress parties had secured majority of seats in the Provincial Legislatures. But in the remaining Provinces—the United Provinces, Central Provinces and Berar, Bombay, Madras, Bihar, and Orissa, where the Congress had secured majority of seats in the Legislatures, Councils of Ministers could not be formed.

The Congress and Office-Acceptance.—The Congress had long been divided on the office-acceptance issue. A section of the Congressmen was not satisfied with extra-constitutional work of the type of civil disobedience and non-co-operation, but desired to capture the citadel of power and prestige in the Provinces, where the Congress might be able to secure majorities of seats, in order to keep out the reactionaries and opportunists who might use the newly

Ministries formed in the Punjab, Bengal, Sind, Assam, and N. W. F. Province

No Ministries in U. P., C. P. and Berar, Bombay, Madras, Bihar, and Orissa

**Arguments
in favour
of Office-
Acceptance**

acquired powers under the Act for the suppression of advanced political movements. These Congressmen believed in exerting political pressure from inside as well as from outside and wanted to create constitutional crises in order to wreck "the unwanted Constitution." It was also argued that by the judicious use of the power acquired under the Act, some good might be done to the masses by giving a practical shape to the constructive programme of the Congress. Moreover the Congress organization could itself be strengthened under the protection of the Congress Ministries. This proposal for 'office-acceptance' seemed to have the general support of the intelligentsia in the country. So the pro-office party in the Congress suggested that non-acceptance of office by the Congress will disappoint the intelligent public opinion in the country and might turn it away from the Congress into the arms of those parties, which promised to give some relief to the people. Against this the anti-office acceptance group argued that the acceptance of office was tantamount to the acceptance of the Constitution which had been definitely rejected by the Congress. Moreover it was likely to kill the revolutionary spirit of the nation and settle down the country to the rut of constitutionalism forgetting the bigger issue of national independence.

The Congress Demand.—In order to avoid the split on this issue, the decision was postponed for a long time by the Congress High Command, but when the General Elections in the Provinces were over by the end of February, 1937, and it was known that the Congress had been returned in majority in six out of eleven Provinces, the issue had to be decided. At a meeting of the Congress leaders at Wardha, Mahatma Gandhi is reported to have given a hint that it shall amount to dishonouring its own word, if the Congress, accepted office without any gesture on the part of the British Government indicating a change of heart on their part in respect of the Congress as a result of the verdict of the country in its favour. The question was taken up at the meeting of the Working Committee of the Congress at Delhi on 15th March, 1937. On the suggestion of Mahatma Gandhi, it was resolved that the Congress parties in the Provinces should form Councils of Ministers, if the leaders of the parties

**Need of a
gesture on
the part of
the British
Government**

**Demand for
Assurance**

were satisfied and were able to declare publicly that they had sufficient assurance from the Governors that the Special Powers vested with them in the Act would not be used as long as the Ministers acted within the four corners of the Constitution. In other words the Governors were to give assurance that they would abstain from the use of their Special Powers and powers of discretion and individual judgment against the advice of the Councils of Ministers in respect of ministerial action, if it was not positively unconstitutional. The implications of the acceptance of this demand were far reaching because this was calculated to change the whole complexion of the scheme of Provincial Autonomy by widening its scope.

No use of
Special
Powers by
the
Governors

A Gesture of Goodwill.—On the side of the Government, His Excellency the Viceroy declared in a speech, which he made at the dinner arranged in his honour by the President of the Council of State, Sir Maneckji Dadabhoy:

His
Excellency
the Viceroy's
Speech

"I have faith in the zeal and public spirit of those in whose hands the electorates have entrusted opportunities for useful and honourable service to the community. It will be both the duty and privilege of the Governors of the provinces and of the Governor-General in his proper sphere to collaborate with several provincial Ministries in their most responsible tasks in a spirit of sympathy, helpfulness and co-operation.

"If all concerned will approach in faith and courage the great charge which is laid upon them, determined to do their utmost faithfully to serve the highest interest of the people, then I am very confident that these apprehensions and doubts, sincerely held I know, which now trouble many minds, will disappear like mists of morning before the rising sun."

This was perhaps intended as a gesture of goodwill and trust on behalf of the British Government.

Invitations and Breakdown.—This was followed by invitations to discuss the formation of the Councils of Ministers to the leaders of the Congress parties in the six Provinces, where they had majorities, by the Governors of those Provinces. In response to the invitations, the leaders saw the Governors, but the negotiations broke down, as the latter pleaded inability to give assurance of the type demanded in the resolution of the All-India Congress Working Committee. The communiques were issued by the Governors regretfully acknowledging this breakdown of the negotiations. It was made clear in the communiqué issued by the Governor of the United Provinces that—

**The Com-
munique
issued by the
Governor of
U. P.**

**The
Constitu-
tional crisis**

"The obligations laid upon the Governor by the Government of India Act and the Instrument of Instructions are clear and specific. . . . It is clearly not in the power of the Governor to meet such a demand."

The communique of other Governors also were couched in similar language and expressed similar ideas. The Congress party leaders, however, were not satisfied with this, and did not agree to form the Councils of Ministers, thus precipitating a constitutional crisis of the first magnitude.

Explanation by Mahatma Gandhi. - On 30th of March, 1937, Mahatma Gandhi issued a statement on the refusal of the Governors to give the required assurances, in which he claimed to be the sole author of the office-acceptance clause of the Congress resolution and the originator of the idea of attaching a condition to office-acceptance. He declared *inter alia*:

"My desire was not to lay down any impossible condition. On the contrary, I wanted to devise a condition that could be easily accepted by Governors. There was no intention whatsoever to lay down a condition whose acceptance would mean any slightest abrogation of the Constitution. Congressmen were well aware that they could not, and would not, ask for any such amendment. . . . The object of that section of the Congress which believed in office-acceptance was pending the creation by means consistent with the Congress creed of non-violence, of a situation that would transfer all power to the people, to work in offices so as to strengthen the Congress which has been shown predominantly to represent mass opinion.

"I felt that this subject could not be secured unless there was a gentlemanly understanding between Governors and their Congress Ministers that they would not exercise their special powers of interference so long as Ministers acted within the constitution. Not to do so would be to court an almost immediate deadlock after entering upon office. I felt that honesty demanded that understanding. It is common cause that Governors have discretionary powers. Surely here was nothing extra constitutional in their saying that they would not exercise their discretion against Ministers carrying on constitutional activities. It may be remembered that the understanding was not to touch numerous other safe-guards over which Governors had no powers. A strong party with a decisive backing of the electorate could not be expected to put itself in the precarious position of the interference at will of Governors. . . ."

The Constitutional Crisis. - Here the matters stood for the time being. The parties seemed to be so sure of their respective positions that they did not feel inclined to reconsider it with a view to arriving at a compromise. The Governors in their action had the support of the British Government as is clear from the following statement of the Secretary of State for India in the House of Lords :

" The Viceroy with my full approval reminded the Governors that while they were fully entitled to offer and while indeed I hope that they would offer to the Congress leaders in the Provinces the fullest possible support within the framework of the Constitution, Parliament has imposed upon them certain obligations of which without the authority of Parliament, they could not divest themselves "

On the other hand, the Congress supported as it was by absolute majorities in the Legislatures and enlightened public opinion outside, did not feel like giving in. Thus there ensued a constitutional crisis at the very outset of the new Constitution. The Constitution seemed to have been virtually wrecked before it had been inaugurated. The Act of 1935 seemed to have been nullified before it was even tried. That meant wasting of the great labours that had been spent in evolving the scheme which was embodied in the Act of 1935, and reopening of the whole 'Indian Question.'

The Interim Ministries.—This could not be allowed to take place. The utter breakdown of the Constitution had to be prevented. A way out had to be found and the Governors decided to install Minority Governments in office. They invited some individual members of the Legislatures to undertake the formation of the Councils of Ministers. The latter agreed to do so. They were also unsuccessful in finding out some obliging gentlemen who were willing to accept places in the Councils of Ministers. These Councils of Ministers showed their willingness to shoulder the responsibility of carrying on the administration in the Provinces.

Thus the situation was saved. These Minority Governments were in the very nature of things stop-gap and *interim* arrangements. These Ministries were, therefore, called the *Interim Ministries*. They were to exist till the time when the leaders of the majority parties could agree to shoulder the responsibility which was by right theirs.

The appointment of the *Interim Ministries* was objected to as illegal in India, and a regular controversy arose on the point, supported by arguments by constitutional pundits on both sides.* These Ministries were clearly against the Instruments of Instructions to the Governors, though not against the provisions of the Act itself. They were justified on the plea that the King's Government

The Statement of the Secretary of State

The Constitution virtually wrecked

The Minority Governments

Stop-gap arrangements

The Legality of the appointment of the Interim Ministries questioned

* See page 51.

must be carried on, against which it was urged that though the King's Government must be carried on, it must be carried on according to law and not against law.

Protection for the Interim Ministries These *Interim Ministries* could not face the Legislatures as they did not command majority of votes. The majorities in the Legislatures would have made their position very awkward by passing straight votes of no-confidence. So in order to afford them protection against this contingency and to secure time for a permanent solution of the deadlock, advantage was taken of the provision in the Act which allowed six months' time for calling the first session of the first Provincial Legislatures after the introduction of Provincial Autonomy. The Legislatures in the Provinces concerned were not summoned to meet so that they were deprived of the opportunity to express their opinion on the action of the Governors in appointing *Interim Ministries*.

Need for Action.—During the six months of their existence, the *Interim Ministries* continued as best as they could, but they failed to catch the imagination of the people. There was a political stalemate in the country and the controversy in respect of the legality or otherwise of the appointment of these Minority Governments went on without leading to any definite conclusion. This controversy lost its importance as the prescribed period of six months came to an end. After the lapse of this period, the newly elected Legislatures had to be summoned, otherwise the breakdown of the Constitution would be clear. Something, therefore, had to be done to save the situation.

Lord Lothian's advice **The Constitutional Controversy.**—But the parties concerned still stuck to their guns. Mahatma Gandhi repeated and explained the Congress demand in a statement issued on 30th March, 1937. In a broadcast from London on 29th March, 1937, and in a letter to *The Times*, Lord Lothian advised the Congress to accept office without any assurance. The Marquess of Zetland, the Secretary of State for India, in a lengthy statement in the House of Lords on 8th April, 1937, praised the courage and public spirit of the *Interim Ministries*. He further declared that the reserved powers of the Governors were an integral part of the Constitution and their exercise

depended upon the policy and action of the Ministers themselves. On 10th of April, 1937, Mahatma Gandhi suggested the appointment of an arbitration tribunal of three judges to decide whether the Governors could give the required assurance under the Act. The proposal, however, was rejected by Mr. Butler in a statement in the House of Commons, though he made it clear that it was not their intention that the Governors by a narrow or legalistic interpretation of their own responsibilities should touch upon the wide powers which it was intended to place in the hands of the Ministers. On May 6, 1937, the Marquess of Zetland repeated this. He declared that the essence of the new Constitution was that the responsibility and initiative for the whole government of the Province, though in form vesting in the Governor, should pass to the Ministry: and the reserved powers of which so much is made by the Congress would not normally be in operation.

This brought the parties nearer to each other. The Congress now demanded that in the event of a serious difference of opinion between the Ministers and the Governors, the latter should dismiss the former. Mahatma Gandhi further narrowed down the demand by demanding that in cases of disagreement, the Governors should demand the resignation from the Ministers. The Marquess of Zetland, however, did not consider it wise or in accordance with the intention of Parliament to lay down that in such circumstances, the Governor must necessarily call for the resignation of the Ministers. On 15th of June, 1937, Mr. Stanley declared in the House of Commons that they were more than ready to meet the Congress half way.

This statement prepared the ground for the final statement made by His Excellency the Viceroy on 21st June, 1937, which cleared the way for the solution of the impasse. His Excellency *inter alia* stated:—

“.... Three months' experience of the operation of the Constitution, short as I agree that that period is, has conclusively shown from the practical point of view, that any legal difficulties in regard to the grant of such assurances apart, those assurances are not essential to the smooth and harmonious working of the Constitution.... There is no vestige of foundation for the assertion, which I have seen advanced, that the Governor is entitled, under the Act, at his pleasure, to intervene at random in the administration of the Province. Those Special Responsibilities are, as I have said, restricted in scope to the narrowest limits possible. Even so limited as they are, a Governor will at all times be concerned to

Gandhi's proposal for the appointment of an arbitration tribunal

Rejected by the British Government

Marquess of Zetland's Explanation

Demand for dismissal and resignation

Zetland's Refusal

Mr. Stanley's conciliatory statement

The statement by His Excellency the Viceroy

Assurances not essential

The Governor will try to carry the Ministers with him

carry his Ministers with him, while in other respects in the field of their ministerial responsibilities, it is mandatory on a Governor to be guided by the advice of his Ministers, even though, for whatever reason, he may not himself be wholly satisfied that that advice is in the circumstances necessarily and decisively the right advice

The
Ministers
can advise
the Gov-
ernor over
the whole
range of
executive
Government

I have already stated that ministers have the duty of advising the Governor over the whole range of the executive Government within the ministerial field, including the area of the Special Responsibilities. For advice so given, whether on matters within or without the scope of the Special Responsibilities, Ministers are answerable to the Legislature? In all such matters in which he is not specifically required to exercise his individual judgment, it is mandatory upon the Governor to accept the advice of his Ministers.

Public
declaration
by the
Ministers

Within the limited area of his special responsibilities, a Governor is directly answerable to Parliament, whether he accepts or does not accept the advice of his Ministers. But if the Governor is unable to accept the advice of his Ministers, then the responsibility for his decision is his and his alone. In that event, Ministers bear no responsibility for the decision, and are entitled—if they so desire—publicly to state that they take no responsibility for that particular decision or even that they have advised the Governor in an opposite sense

Resignation
and dismiss-
sal

I ought perhaps to add that the suggestion that the Governor should in certain circumstances demand the resignation of his Ministers is not the solution provided by the Act, so that it will not be possible for Governors to accept it. Both resignation and dismissal are possible, the former at the option of the Ministers and the latter at the option of the Governors. But the Act does not contemplate that the Governor's option should be used to force the Minister's option and thus to shift the responsibility from himself"

Removal of
apprehen-
sions

This great speech of His Excellency clarified the whole position. The interpretations, explanations, and assurances helped to clear the atmosphere by removing apprehensions and prejudices based on distrust. The political opinion in this country welcomed this great speech and expected the Congress to respond.

Satisfaction
among
Congressmen

The End of the Crisis.—The Working Committee of the Indian National Congress met at Wardha from July 6th to 7th, 1937, and reviewed the situation. The Viceroy's statement had been very conciliatory. "It gave in spirit what it could not give in letter. It convinced the Congress and Mr. Gandhi that the British Government wished the Congress to take seriously to the constitutional experiment on which it had embarked." Moreover, the Congress members of the Legislatures and majority of Congressmen seemed to be satisfied with the assurances and explanations given. The Working Committee, therefore, resolved—

"That Congressmen be permitted to accept office where they may be invited thereto, but it desires to make it clear that office is to be accepted and utilized for the purpose of working in accordance with the lines laid down in the Congress election manifesto and to further, in every possible way, the Congress policy of combating the new Act on the one hand and of prosecuting the constructive programme on the other."

Congress Working Committee's Resolution

In pursuance of this resolution, Congress accepted office in the six Provinces of Bombay, Madras, Central Provinces and Berar, United Provinces, Bihar, and Orissa, where it commanded majority in the Legislatures.

Formation of Congress Ministries

End of the Interim Ministries.—The *Interim Ministries* were perhaps too glad to make way, and faded out of the picture. "Their title to fame consisted in a loyal intention to help "carrying on the King's Government," filling a lacuna in a transition period, as also to the fact that there were men in India who were prepared to canalise national endeavour for the realization of the national destiny." Whatever view might be held about the legality or illegality of the appointment of the *Interim Ministries*, progressive public opinion in India cannot appreciate the conduct of those politicians, who on the very outset of the inauguration of responsible government in the Provinces helped to set a bad precedent by the formation of minority governments, which runs counter to the principles of responsible self-government.

Their title to fame

Implications of the Understanding.—Before proceeding further to examine the work of the Congress and Non-Congress Ministries in the Provinces, it seems desirable to examine the implications and results of the assurances and explanations that ended the controversy. The Governor-General and Viceroy gave the virtual assurance that the Governors had no intention to stand in the way of the constitutional activities of the Ministers. The Governors would use their best endeavours to avoid any conflict with their Ministers. In case the Governors do not accept the advice of the Ministers in the sphere of their Special Responsibilities, the latter may, if they so desire, state publicly that the responsibility for that particular decision was that of the Governor and that they had advised him otherwise. On the question of resignation *versus* dismissal, it was stated that the Ministers could resign of their own accord or the Governor might dismiss them, as the occasion may demand. On the

Condemned by progressive public opinion

Summary of the Viceroy's statement

face of it, this did not seem to concede anything, and thus to change the situation.

Legally no assurance of the kind demanded by the Congress was given. It is clear that the responsibility of the Governor in the sphere of his Special Responsibilities is still theoretically his, and he can use his individual judgment in the last resort even against the advice of his Ministers. What is conceded is only this that the Ministers can publicly declare that the responsibility for the decision was that of the Governor and that their advice was different. Even the demand that the Governor should dismiss his Ministers or demand their resignation in the event of a serious conflict of opinion is not conceded as the power of the Governor to dismiss the Ministers is kept in tact and the Ministers are also given the liberty to resign. Thus apparently there does not seem to be any change; yet in actual practice these explanations, interpretations, and assurances have brought about a very great change. It is made clear beyond all doubt that the Parliament intended to confer on Ministers responsible to their Legislatures unrestricted powers to administer the Provincial Governments and that there is no foundation for the suggestion that a Governor is free, or is entitled, or has the power to interfere with the day-to-day administration of a Province outside the limited range of the Responsibilities especially vested with him. Even in the latter sphere, it should be the concern of the Governor to carry his Ministers with him. In actual effect, this means a great change. It is clear that the whole provincial administration is now subject to the ministerial advice, and it is understood that as far as he can help it, the Governor will not interfere even in the sphere of his Special Responsibilities. This means a great extension of the power of the responsible Ministers. This makes the Provincial Autonomy something real and tangible. It may be said that this assurance has vested the transparent soul of the Provincial Autonomy with a body. This is a great advance in view of the fact that one cannot escape the impression from the study of the Act itself, whatever might have been said in speeches and otherwise, that the framers of the Act intended the powers of interference and control of the Governors-

Legal Interpretation

Practical Interpretation

Change in practice

Expansion of the scope of Provincial Autonomy

to be real and to be used at will. Otherwise why should they be made mandatory? If it had been intended otherwise, their use would have been optional rather than mandatory, and the word "may" would have been used instead of the word "shall," which has been generally used in the Act. As a result of the controversy and by the application of the Gentleman's Agreement, as Mahatma Gandhi once put it, it is understood that ordinarily these powers will not be used against the advice of the Ministers. By one stroke of constructive statesmanship expressed through a move, which looked childish and even frivolous to some, Mahatma Gandhi changed the whole meaning of Provincial Autonomy.

But one more aspect of the controversy should not be lost sight of. The Gentleman's Agreement implies obligations on both sides. If the Governors are expected not to use their Special Powers and allow the Ministers free scope in respect of their constitutional activities, Mahatma Gandhi, on behalf of the Congress, has also given this assurance that it is no part of the policy of the Congress Ministers to seek deadlocks on minor matters. In actual practice, it means that the policy of ending the Act by means of constitutional deadlocks, as was originally advocated by the pro-office-acceptance Congressmen, is given up to all intents and purposes; and that the Congress is engaged in working the Constitution and to get the best out of it for the good of the depressed Indian masses. Thus a great change has been brought about in the policy of the Congress, which has, at least for the time being, given up the barren path of civil disobedience and non-co-operation and is engaged in useful constructive work for giving relief to the poor masses. It has, however, been made clear that the Congress does not fight shy of constitutional deadlocks on issues of fundamental importance, but its official policy, as is stated in the resolution of the Working Committee quoted above, is *to combat* the Act and not *to wreck* it. In actual practice, however, the Constitution is being worked with the idea of improving the condition of the masses.

The Great Change.—The acceptance of ministerial offices by Congressmen brought about a great change in the political life of the country. The Indian National Congress which was till recently opposed to

The
Gentleman's
Agreement

Obligations
on both sides

Mahatma's
assurance

Congress
engaged in
constructive
work

From civil
disobedience
to constitu-
tionalism

the Government and was engaged in civil-obedience and non-co-operation with the idea of clogging the administrative machinery now formed the Government in six out of eleven Provinces in India and became responsible for running the administrative machinery. The organization that had so far been busy in the destructive work of non-co-operation, as some put it, was now called upon to take up the constructive work of reform. It had gone to the country with an attractive and useful electoral programme which, had now to be given a practical shape. The reforms, which the Congress had demanded as an opposition party, had to be carried through if public sympathy was to be retained.

The Parliamentary Sub-Committee.—This required a different mentality and a different attitude of mind on the part of the Congressmen. Greatest care was necessary in order to keep the Congress legislators and administrators on the right path. Moreover, the Congress being an all-India body with a uniform all-India programme, there is need for co-ordination of the work of the Congress Ministries in the different Provinces. Further, the Congress has not yet given up its programme of carrying on a fight against the British imperialism for the attainment of substance of independence for India, and for that purpose it does not propose to slacken its discipline and feels the necessity of keeping a strict control over its Ministers so that they may not lose their revolutionary mentality by coming in contact with the administrators and by sitting on comfortable cushions in gilded chambers of the Government Secretariat. For this purpose the Congress Working Committee constituted a small Parliamentary Sub-Committee, consisting of Sardar Vallabhai Patel, Maulana Abul-Kalam Azad, and Dr. Rajendra Prasad, to co-ordinate, supervise, direct, and control the work of the Congress Ministries and parties in the different Provinces.

Sardar Patel,
M. Azad,
and Dr.
Rajendra
Prasad

Programme

The Congress Ministries in Action.—The Congress Ministries set down to work in the light of the programme outlined in the Congress election manifesto. This followed three main lines, (a) reducing the cost of the administration and reducing the power of the bureaucracy, (b) the redistribution of wealth and economic privileges so as to better the economic position of the backward and the "have-not" classes, and (c) the restoration of political power to the people

both psychologically and practically so that imperialism and bureaucracy may go for ever. For the attainment of these objectives, a number of problems such as unemployment, poverty, education, peasant rights, industrial progress, and the uplift of the Scheduled Castes had to be tackled.

This was a Herculean task that had been set by the Congress before itself. But this had to be performed, if the poor masses were to be saved and the office-acceptance was to be justified.

A Herculean task

Small Salary for the Ministers.—The Congress was committed from the very beginning to cutting down the cost of the top-heavy administration in order to get more money for nation-building work. The Karachi Congress had fixed Rs. 500/- per mensem as the maximum salary for public servants in India. Some people considered this as too drastic a cut in the land of proverbial high salaries, and were sceptical that when it would come to actual acceptance of such a small salary, the Congressmen will not rise equal to the occasion. The Congress Ministers, now, gave a lie to the prophecies of these oracles by announcing that they would accept Rs. 500/- as monthly salary in addition to small allowances. This made some saving, which might not have been much but which certainly caught the imagination of the masses, produced a good impression on the electors, and set a good precedent for others.

A good precedent

The Problems before the Ministries.—The problems which faced the Congress and non-Congress Ministers in the Provinces were generally speaking the same. The miserable plight of the peasants called for immediate action. Increasing unemployment among the middle classes, reform of the educational system, banishment of illiteracy, encouragement of industry, jail reform, local self-government reform, administrative reform, rural reconstruction work, introduction of Prohibition, special uplift work for Scheduled Castes and working classes, etc. demanded immediate solution. The restoration of civil liberties was another problem which the Congress Ministers in particular were expected to take up immediately.

Constructive Work

The Work of the Congress Ministries—The work of the Congress Ministries in the different Provinces has generally followed identical lines with certain minor exceptions. Civil liberties have been restored

by the release of political prisoners and return of securities to the newspapers, though any trend of violence in speeches and writings is deprecated. Peasant problem has been attacked by debt legislation and tenancy legislation. Educational reform has been attempted by working on the lines of the Wardha Scheme of education. Literacy campaigns have been organized. Jail reform has been undertaken. Rural reconstruction work has been taken up. Prohibition has been introduced in certain selected areas. It is not possible here to describe in detail the work of the various Provincial Ministries, yet an attempt will be made in the following pages to give a brief summary of their work so as to judge the achievement of Provincial Autonomy.

In the United Provinces.—The Congress Government in the United Provinces started by lifting the ban on a number of associations in the Province, like the Youth League, Workers' and Peasants' Party, Kisan Sangh, Hindustani Sewa Dal, etc. It released a number of political prisoners, and police surveillance over political workers and specially reporting of political speeches, etc., was discontinued. Freedom of the press was established. A special officer was appointed for the purpose of eradicating bribery and corruption in the Public Services. A committee under the chairmanship of Kunwar Sir Maharaj Singh was appointed to enquire into the general question of corruption. Administrative reforms in respect of the working of honorary assistant collectors, separation of the judiciary from the executive, local self-government, and jail administration have been introduced. Expenditure and scope of the beneficent departments have been considerably widened. Educational reform on the lines of the Wardha Scheme has been undertaken. Prohibition has been introduced in Etah and Mainpore districts of the Province. Attention is also being paid to the industrial uplift of the Province.

The Government has paid special attention to the problem of the peasant. The Hon'ble Premier, Pandit G. B. Pant, made an announcement in the Legislative Assembly on 2nd August, 1937, indicating the Government's intention to form two Committees: one to consider reform of the Tenancy and Land Revenue Law, and the other to examine proposals for relieving rural indebtedness. The Government issued instructions for stay of

**Restoration
of Civil
liberties**

Corruption

Administrative Reforms

**Constructive
Work**

**The
Problem of
the Peasant**

proceedings for recovery of arrears of rents previous to Rabi 1344 Fasli, for prohibiting ejection or enhancement, and the recovery of debts due from farmers and small tenants. This was given statutory effect by passing two Acts. The farmers are given facilities for the depositing of their rents in the tahsils free of charge. Relief has been given in the land revenue and *takavi* has been liberally distributed. Attention has been paid to fodder and grazing in rural areas. The Fodder and Grazing Committee prepared a five-years' programme of research on the improvement of fodder-production in waste-lands and ravines and also on the relative nutritive value of the principal grasses. Special attention is being paid to improve the technique of agriculture. A special scheme for rural development was taken in hand. Tenancy legislation, purposing to introduce great changes, has been introduced in the Legislature. This has been passed by the Assembly and the Council.

Rural
uplift

Tenancy
Legislation

Industries
and Labour

The Government has paid attention to industries and labour. It passed the United Provinces Sugar Factories Control Bill to regulate the working of the sugar factories in the Province. It approved of a scheme for the development of the Raw Hide Industry. The attention of the Government was drawn towards the problem of labour by some labour troubles at Cawnpore. It has passed a Bill for the settlement of labour disputes by conciliation by setting up a regular machinery for looking after the interests of labour and promoting close contact between the employers and the employees. Rentrenchment has also been brought about in the cost of the administration, and with this end in view the moving of the Government to the hills in summer has been considerably stopped.

In Central Provinces and Berar.—In other Provinces the work has proceeded on similar lines. The Government of Central Provinces and Berar passed orders assuring liberty of person, speech, and the press. The official move to the hills was discontinued. Relief was granted to the agriculturists. Facilities for the payment of land-revenue were granted. The liberal system of remissions and suspensions of land revenue was continued. The Protection of Debtors Act was passed. With the idea of spreading education among the masses in the countryside, the Vidya Mandir Scheme has been

The Vidya
Mandir
Scheme

introduced. Local self-government and jail reforms have been undertaken. A beginning towards Prohibition has been made by declaring Narsinghpur sub-division, Saugar district, Akot taluq and the Badnera, Hinganghat and Katni industrial areas dry.

Restoration of Lands and Properties

In Bombay.—The Congress Ministry in Bombay also tried to secure economy and retrenchment. It secured the restoration of lands and immovable properties, forfeited and sold in consequence of the Civil Disobedience. Movement, to their original holders after the payment of compensation to those who bought those properties. It restored civil liberty by rescinding numerous orders issued by the previous Governments under the emergency and other laws, and by lifting bans on associations and persons. It released certain political prisoners. It re-organized the prison system with the idea of promoting jail industries. It appointed a Committee to report on the policy in respect of the Criminal Tribes. It abolished Benches of Honorary Magistrates in the Province except in the City of Bombay. To check communal disturbances in Bombay, it passed the *Goonda* Act. To check labour troubles, it passed the Trades Disputes Act. Special attention has been paid to the problems of rural areas. Besides granting the usual relief to the peasants, the Bombay Small Holders Relief Act, 1938, and the Bombay Money-Lenders Act have been passed. The Government is committed to the policy of complete prohibition of the sale and consumption of alcoholic drinks, opium and hemp drugs. In the first instance a considerable reduction of toddy booths was carried out in Bombay City. Then Ahmadabad and suburbs were declared dry. Experiments in Prohibition of the sale of intoxicants were tried in Bombay on certain days. Bombay has now been declared completely dry from 1st August, 1939. The Government takes special interest in measures for the advancement of education among the Scheduled Castes *viz.*; *Harijans*. Their rights in respect of worship and entry to public places have also been recognized.

Restoration of Civil Liberty

Prisons

The Trades Disputes Act Peasant Problem

Prohibition

Work for the Scheduled Castes

In Bihar.—In Bihar, the Government has paid special attention to the problem of the peasantry and the land. The Ministry tried to carry out its tenancy legislation with the agreement and approval of the

landlords. Immediate relief was given to the tenants both in Bihar proper and Chhota Nagpur. A Bill was also introduced to provide for the restoration of *bakasht* lands to the tenants and reducing the arrears of rent in certain cases. This was followed by a Supplementary Bill dealing with such matters as realization of rent by certificate procedure, abolition of *salami*, the definition of the rights of the tenants in trees, and suits and proceedings for recovery of rent. A separate Tenancy Bill was introduced for Chhota Nagpur. The Bihar Money Lenders' Bill and the Bihar Agricultural Income Bill have been passed. The latter Bill was designed to get more money to finance the rural development scheme. The Bihar Markets and Dealers' Bill designed to provide for better control and regulation of markets and for licensing shops was also introduced. An Act was passed to regulate the sugar industry. Jail administration has been improved. Committees were appointed to suggest ways and means for bringing about retrenchment and also to examine the question of separation of executive and judicial functions. Educational reforms have been undertaken. Prohibition has been introduced in the District of Saran.

The
Tenancy
Legislation

Other
Beneficent
Work

In Orissa — The new Province of Orissa was formed by joining together the tall ends of three different Provinces of Madras, Central Provinces and Berar, and Bihar. It is a small, poor, and backward Province. Sixty percent of its entire area is covered by the Partially Excluded Areas. The Government, under Hon'ble Mr. Biswanath Dass, has done its best to carry out the usual Congress programme of reforms. It sponsored two important Bills, the Orissa Tenancy Act Amending Bill and the Madras Land Estate Act Amending Bill. It undertook to reorganize the Co-operative Department. Educational reform has also been undertaken, special attention having been paid to the spread of education among the *Harjans*, hill-tribes and other backward communities. The learning of Hindustani in schools has been encouraged. *Khadi* and cottage industries have been patronized. Land mortgage banks have been established. It is proposed to introduce Prohibition in the Province.

Constructive
work

In Madras.—The Madras Government has also worked on similar lines. It was the first to introduce Prohibition in the country by banning the

Prohibition

use of intoxicants in the Salem District. The scope of Prohibition has recently been widened to include Cuddapah and Chittoor Districts. It also tackled the land-revenue system and passed the Agriculturist Relief Bill. The Prakasam Committee was appointed to overhaul the zamindari system. It has been declared that the untouchability will not be recognized as a legal disability in spite of custom or legal decisions to the contrary. To secure the opening of the temples to the members of the Scheduled Castes, it is proposed to pass the "Malabar Temple Entry Bill." Recently an ordinance has been enacted to indemnify from legal action those who may open the temples to the members of the Depressed Classes before the passing of the Bill. Jail reforms, local self-government reforms, and some other administrative reforms have been introduced. The Government has decided to introduce the compulsory teaching of Hindi in schools.

Land-revenue system

Other Reforms

Legislation

In Assam.—The Provinces of Assam and North-West Frontier Province have also come under the rule of the Congress Ministries, which are carrying on work according to the principles of the Congress. In Assam, the Ministry has either passed or proposes to pass the Assam Provincial Legislature (Removal of Disqualifications) Act, 1938, a Bill to increase the tax on motor vehicles, the Assam Criminal Law Amendment Bill, the Assam Court Fees (Amendment) Bill, the Agricultural Income-tax Bill, the Sales Tax Bill on Petrol and Lubricants, Entertainments Duty Bill, Betting Tax Bill, the Assam Municipal (Amendment) Bill, the Goalpara Tenancy (Amendment) Bill, the Sylhet Tenancy (Amendment) Bill, and the Revenue Tribunal Bill. It has also undertaken the prohibition of opium.

Reforms

In the North-West Frontier Province.—In the North-West Frontier Province, the Congress Government started by repealing the Frontier Crime Regulation. The Tehri Bills, which it passed, were returned by the Governor with certain suggested amendments, to which the Legislature agreed. The repeal of Section 124-A was also prevented by the Governor. A Bill for the relief of agriculturists has been passed, while it is proposed to pass a Marketing Bill.

Non-Congress Ministries : In Sind.—The Provinces of Sind, Bengal, and the Punjab are under non-Congress Ministries. In Sind, the Allahbaksh Ministry,

which is an independent Ministry receiving the support of both Hindu members and Muslim members, is carrying on work on lines akin to the Congress programme. Like the Congress Ministers, the Sind Ministers are also drawing small salaries of Rs. 500 month. They are adopting similar ameliorative measures. The Ministry abolished nominations in local bodies. The appointment of honorary magistrates was stopped, while the number of stipendiary magistrates was increased. Swadeshi was encouraged. Some confiscated property of the Congress Committees was returned, and Mr. Hans Raj "Wireless" was released. A number of Committees, the Retrenchment Committee, the Education Committee, the Rasai Committee, the Excise Committee, and the Joint Electorate Committee were appointed. No action has so far been taken on their reports due to uncertain political conditions in the Province. An Anti-Dowry Act was passed.

In Bengal.—The Bengal Government is a Coalition Government, consisting of the Krisak Praja Party group led by Hon'ble Mr. Fazl-ul-Haq, the Muslim League Party led by Sir Nazim-ud-Din, some Hindu members under Sir Nalini Ranjan Sarkar, some Scheduled Caste members, and the Europeans. At the very outset it was faced with the problem of the release of the political prisoners and the detenues. Under pressure of public opinion, it adopted the policy of gradual release of prisoners. Some of them have been released though some are still behind the prison bars. The Government was also called upon to deal with labour troubles in jute mills. It appointed an Enquiry Committee to enquire into the antiquated and laws of Bengal. It tried to tackle the problem of rural Bengal with the help of Bengal Tenancy Act, Bengal Money Lenders' Bill, the Bengal Agricultural Debtors (Amendment) Bill, etc. It now proposes to reform the municipal administration of Calcutta by passing the Calcutta Corporation Amendment Bill. The Ministry is at present engaged in settling the question of communal proportions in the civil services in the Province.

In the Punjab.—It is very difficult to supply a political label to the ministerial party in the Punjab. When the General Elections were over, the Unionist Party under the leadership of Hon'ble Major Sardar Sir Sikandar Hayat Khan commanded a decisive majority.

Local
Government
reforms

Enquiry
Committees

Composition

Release of
Political
Prisoners

Labour
Troubles

Rural
Problem

Calcutta
Corporation
Amendment
Act

Formation
of the
Ministry

Composition
of the
Ministry

It had, therefore, the right to form the Ministry. It was decided to have a Cabinet of six Ministers. Hon'ble Sir Sikandar Hayat Khan selected four Ministers from his own party and two from outside its ranks—one from the Khalsa National Party and one from the National Progressive Party. It is said that the two non-Unionists were included in the Ministry.

"not as the nominees of any parties but because the Unionist Leader found in them suitable colleagues to have with him in the interests of his programme. Their choice as Ministers involved no pact or bargain with the parties from which they were drawn."*

A Coalition
Government

But it cannot be gainsaid that the selection of these two Ministers assured the support of their respective parties to the Ministry, thus further augmenting the strength of the ministerial party in the House. As a result of this, the position appeared to be that the Government contained the representatives of the Unionist, the Khalsa National, and the National Progressive parties. It was supported by the Unionist *cum* the Khalsa National *cum* the National Progressive majority in the House. The ministerial party was dominated by the Unionist party and agreed to carry out its programme. Although so much is clear, yet it is not easy to say whether the Ministry was a Coalition or a Unionist Ministry.

A novel
experiment

It was not a Coalition Cabinet because there was no pact or bargain with the other parties, and because the Ministers belonging to them were not exactly their nominees, and yet it was not merely a one-party Government. The constitution of such a Cabinet was a novel and "interesting political and constitutional experiment." It had some advantages of its own. It helped the ministerial party to add to its strength still further so as to make it overwhelming, thus reducing the strength of the opposition groups to insignificance. This was bound to help the Unionist party to carry out its programme much more easily than it would have been possible to do otherwise, and with the help of those who were otherwise likely to oppose it in the House. (It may, however, be admitted that even without the help of these parties, the Unionist party could have carried out its programme with the help of the absolute majority which it commanded in the House.)

Advantages

* 18 Months of Provincial Autonomy in the Punjab, p. 9.

Moreover this alliance gave the Unionist Ministry an appearance of non-sectional and non-communal combination, consisting of agriculturists and non-agriculturists, zamindars, and *banias*, landlords and peasants, urban people and rural people, and Muslims, Sikhs, Hindus, Christians and Europeans. Perhaps it was a genuine attempt on the part of Sir Sikandar to give a national appearance to his Ministry and to unite under his banner all those elements which could be united.

On the other hand, this kind of composite Cabinet blurred the distinctions between the political parties and their programmes. As the smaller groups gave their general support to the programme of the dominant party without any promise on the part of the latter to support the programme of the former, the whole thing assumed the appearance of an unprincipled alliance. Rightly or wrongly the smaller groups, therefore, were likely to be dubbed as political opportunists. Moreover, this kind of alliance was bound to stand in the way of the development of the party system without which democracy cannot work. Lastly, in the absence of any clear understanding in respect of principles and programme between the component parties, there could not be a good merger and the combination was bound to be ill-assorted and therefore weak. It was likely to give way at a critical time. The position was further complicated when the Muslim members of the Unionist party decided to owe allegiance to the Muslim League. People were certainly sceptical about the success of this experiment. Dr. Sachidananda of Patna is reported to have stated on 21st August, 1938, as under :—

"Another non-Congress Ministry, that of the Punjab, is still well established, but the combination of its component elements is a highly artificial one and one need not be surprised if, in due course, it crashed.....His (Sir Sikandar's) chief difficulty, however, is not so much from the Opposition as from its own party—which is a motley crew, of each shade and hue, judged from the political stand-point. Most of the Muslim members, who constitute a clear majority, claim equally to be Unionist and Muslim Leaguers at one and the same time; while the Hindu supporters are similarly Unionists and also members of one or other Hindu organization. It would not be right to express any opinion at this stage of this new kind of experiment in democratic Government, in which almost each member of the governing party owes allegiance to two divergent and possibly conflicting political organizations. At any rate, it seems to me an attempt to introduce into democratic administration the

National Appearance

Disadvantages

Unprincipled alliance

Ill-assorted combination

Dr. Sinha's Remarks

spirit of Jekyll-and-Hyde activities which, I thought, was not likely to be appreciated outside the regions of romance....."*

Not an unqualified success

The experiment has not been a complete success as the National Progressive party, representing urban Hindu interests, found itself in an awkward position when the Ministry sought to carry out its rural programme by passing certain contentious measures without caring for its opinions. Under pressure of public opinion in their constituencies, most of the members of the party had to sever their connection with the ministerial party. The Khalsa National party, mostly representing rural interests, however, still continues to support the ministerial party.

Programme of the Ministry

ill Liberty

Coming to the work of the Punjab Ministry, it may be said that the Ministry has been fairly active during the course of the last two years. Briefly stated, the programme of the Ministry is "lightening the burden of the peasantry, tackling the problem of unemployment, development and expansion of nation building activities, uplifting backward classes, including our brethren of the scheduled castes, and the promotion of communal amity and goodwill." Unlike the Congress Governments, the Punjab Cabinet believes in the necessity of "restricting the liberty of individuals without putting them on legal trial." It was, therefore, not prepared to give up special powers for the purpose, but it used them "most sparingly." Restrictions on certain persons were removed. Some martial law prisoners and Babar Akali prisoners were released before the expiry of their terms of imprisonment. Some non-political old, infirm, or ailing prisoners were also released.

Removal of corruption and tyranny

Promotion of communal harmony

The Government carried on a campaign for the removal of corruption in public services. To prevent the tyrannies of subordinate officials, orders were issued warning the officials concerned against exacting *begar* from the poor villagers. The Ministry tried to promote communal harmony and goodwill in the Province by taking action against communal agitators, by not standing in the way of Hindu agitation for the giving up of a scheme for the building up of a big abattoir at Lahore Cantonment, by opposing a legislative proposal for the restoration of Shahidganj to Muslims, and by convening a Unity

Conference. The Punjab Government takes a special interest in the rural uplift work. It has passed a number of measures for the uplift of the agriculturists, and specially the statutory agriculturists. Among these measures may be mentioned the constitution of Debt Conciliation Boards, issuing of orders for exempting the whole of the fodder crop of an agriculturist debtor from attachment in execution of civil decrees, and the passing of the Punjab Alienation of Land Amendment Act, the Punjab Debtors' Protection Amendment Bill, the Punjab Alienation of Land Second Amendment Bill, the Punjab Restitution of Mortgaged Lands Act, the Punjab Registration of Money-lenders Act, the Punjab Alienation of Land Third Amendment Act, and the Punjab Agricultural Produce Marketing Bill. The Panchayat Bill and the Compulsory Primary Education Bill were also introduced. It is also proposed to introduce the Lahore Corporation Bill. The Punjab Government also felt necessary to sponsor the Punjab Assembly Sergeant-at-Arms Act, which was passed by the Assembly.

To deal with different pressing problems, the Government appointed a number of Committees such as the Unemployment Committee, the Land Revenue Committee, the Resources and Retrenchment Committee, and the Education Committee. These Committees have been engaged in their work for a fairly long time, but only the reports of the Unemployment Committee and the Land Revenue Committee have so far been made available.

A good deal of useful departmental work has also been done. Jail administration has been reformed by giving more facilities to the prisoners and by introducing industrial training in jails. Irrigation facilities have been extended. The Haveli Canal Project has been completed, while some other projects are under consideration. More money is being spent on nation-building activities. Educational facilities in rural areas are being extended. The Hon'ble Mian Abdul Hai, the Minister of Education, is taking a special interest in the campaign for mass literacy and adult education. The Government declared itself in favour of initiating a policy of Prohibition on a limited scale, but has not been able to embark on it on account of financial reasons. It has done a very commendable work in the famine-stricken area of the Hissar District by spending about two crores of

Rural Up-lift Work

Legislation for the benefit of the agriculturists

Compulsory primary education

Sergeant-at-Arms Act

Appointment of Committees

Useful Departmental Work

Work for the Scheduled Castes

rupees. In order to help the members of the Scheduled Castes, the Ministry issued circulars forbidding *begar*, and declaring all publicly owned wells open to them. The Punjab Government specially claims to represent the martial classes of the Punjab and wants to protect their position in the Indian army. The Punjab Premier is specially keen on this.

Work for the Martial Classes

Achievement of the Punjab Ministry

Thus the Punjab Ministry has tried to work along five main lines, *i.e.*, the promotion of inter-communal co-operation and goodwill, offering relief to agriculturist debtors, removal of corruption in public services, improving the condition of the members of the Scheduled Castes, and safeguarding the position of the Punjab in the Indian army. In spite of a well-meaning attempt on the part of the Hon'ble Premier, the Ministry has not been very successful

Communal Unity

in the promotion of communal unity, and the communal distrust still persists; but it must not be forgotten that the state of affairs in this respect is at least equally bad in other Provinces of India. The Punjab Government has mainly devoted its attention to legislation affording relief to the agriculturist debtors. It is too early to state what

Rural Legislation

will be the effect of the laws, which have been passed, on the prosperity of the Province, but it must be admitted that there is need for such a legislation in the Province. Most of the well-wishers of the Province agree with this legislation on principle but differ as far as the actual provisions of the various Bills are concerned. While on the one hand these provisions are claimed to be conferring great benefit and fulfilling real need, on the other it is feared that they do more harm to the non-agriculturist classes than they do good to the agriculturist classes. While allowance must be made for the natural resentment of the vested interests which are touched by the laws, it may be asserted that these Bills are, to say the least, highly contentious and some of them are at least apparently discriminatory. They have widened the

Cleavage between the agriculturists and the non-agriculturists

gulf between the agriculturist and the non-agriculturist population in the Province. The matters have been made worse by the speeches of some of the top lights in the political life of the Province. This is not good from the national point of view, and something should be done to close this cleavage in the ranks of the Punjabees, while giving the maximum relief to the poor agriculturists who form the majority of the

population in this Province. It has also been said that these Bills are more for the good of the bigger landlords than of the smaller *zamindars*. So something should be done to protect the interests of the latter as against the former. It may be stated here that some other Provincial Governments have tried to solve the peasant problem by working on both the above-mentioned lines. Something has been done to remove corruption among the public servants, but this is an age-long evil and must take time to go. More should be done for the social, economic and political uplift of the members of the Scheduled Castes. The recruitment in the army concerns the Punjab not merely from the communal and political points of view, but also from the economic point of view. A considerable number of the Punjabees make their living as soldiers in the army and draw a substantial amount of money as salary and pension. If this recruitment is stopped or curtailed, the rural Punjab is bound to suffer economically as unemployment in the rural population will increase. The Punjab Government, and specially the Hon'ble Premier is, therefore, very keen on safeguarding the present position of the Punjab in the army.

Need of relief to small zamindars

Corruption

Scheduled Castes

The position of the Punjab in the army

The Achievement of Provincial Autonomy.—After examining the work of all the Provincial Ministries, it may be concluded that the Provincial Autonomy during the last two years, or so, has meant a good deal of beneficent activity in the Provinces. The new responsible governments have tried to do good to the people according to their circumstances and resources. The have-not classes have been particularly attended to, and some improvement is being brought about in their position. The backward classes are coming forward and there is a general improvement and progress. Various misgivings about Provincial Autonomy have proved to be false, and it may be said that on the whole it has worked well. This has been admitted by the Indian National Congress and His Excellency the Viceroy, who is reported to have said in a speech at Peshawar on April 19, 1938 as under :—

Constructive and useful work

Appreciation by His Excellency the Viceroy

“.....The first stage of that Constitution has come into being and while there may be ups and downs and while difficulty and anxiety may from time to time arise on a broad view we can claim that the first year of Provincial Autonomy has worked well

and that the provincial legislatures have shown imagination and responsibility in a high degree....."

Provincial
sources of
revenue
inadequate
and inelastic

The Policy
of
Prohibition

A big hole
in the
Provincial
Budgets

The views
of the
Congress

Problems of Provincial Autonomy : Provincial Finance.—The working of Provincial Autonomy has brought certain problems to the fore-front which must be briefly referred to here. The first and the foremost is the problem of Provincial Finance. The problem resolves itself in a simple and yet difficult question, how to find out money for the ever-increasing nation-building activities of the Provincial Ministries when the people do not want to, or perhaps cannot, pay more taxes. The problem baffles the Provincial Finance Ministers because the sources of revenue allotted to the Provinces are inadequate and inelastic. Moreover new taxes are not popular. Further some Provincial Governments are committed to the policy of Prohibition and they have launched the experiment, which is, in certain cases, on a fairly extensive scale. This means a huge loss of revenue and introduction of various financial complications and difficulties. In Bombay, it will ultimately mean the loss of revenue amounting to Rs. 3 crores annually in a total annual income of Rs. 12 crores. The Madras Government has already suffered the loss of about two-thirds of a crore of rupees. The U. P. Government's excise revenue has come down to Rs. 115 lakhs from Rs. 152 lakhs. Thus the Prohibition programme of the Congress Ministries means a big hole in the Provincial Budgets, which is further widened by expenditure on rural uplift. The Congress, however, has deliberately undertaken to follow the policy of Prohibition. It is committed to this policy since 1921 and there is no going back on it when there is opportunity for putting it through. From the economic point of view, it believes that this is—

" the greatest single measure for the economic improvement of the masses. For every pie which the Government are likely to lose by the introduction of Prohibition, they put ten pies in the pockets of the poor. With a stroke of the pen, it increases the income of the poorest classes and enables them to have necessities, without which they had to go previously, because the largest portion of the workers' wages found their way into the grog shop."

Moreover the Congress does not regard this question merely from the economic point of view; for it is more a moral issue than an economic one. Thus the Congress is determined to see this reform through. In spite of gloomy forebodings and determined

opposition from certain sections, the experiment is being tried on an extensive scale in most of the Provinces under the Congress rule. The Bombay Government, however, leads in this respect. From August 1st, 1939, it has declared "dry" the whole Bombay City and suburbs, covering an area of over two hundred square miles with a population of over one and a half million, consisting of twenty-five different nationalities. This is a great and daring experiment, and its success will be watched with anxious interest all over India, and perhaps all over the world.

A great and
daring
experiment

This admittedly complicates the financial position in the Provinces. The budgets must be balanced. This can only be done by devising new taxes. The Madras Government has levied a turn-over tax. The Bombay Government has widened the scope of the Sales Tax and has in addition levied a Property Tax. The U. P. Government has hit upon a new tax, the Employment Tax, which will be paid by people with salaried incomes. These taxes are frankly unpopular and have made the Congress Governments unpopular with certain sections of the people.

New taxes

Even apart from the effects of the policy of Prohibition, the problem of Provincial Finance is pressing. Some welcome relief has been given to the Provinces by the distribution of their share of the Income-tax under the provisions of the Act. It was not expected that money would be immediately available for distribution among the Provinces, but the unexpected happened. Although large calls were made on the Central Exchequer, such as a net loss of Rs. 2½ crores of rupees on account of the separation of Burma, about a crore of rupees on account of the cancellation of certain Provincial debts and consolidation of the remainder at a lower rate of interest, Rs. 56 lakhs on account of additional grants-in-aid to the deficit Provinces, and Rs. 54 lakhs on account of the enhanced payments from the proceeds of the Jute Duty, yet on account of a welcome improvement in Railway revenues, it became possible to distribute a part of the receipts from Income-tax to the Provinces. In the revised estimates for 1937-38, it was assumed that the sum available for distribution among the Provinces would be Rs. 138 lakhs, but later on it was feared that railway receipts would come down

Distribution
of Income
tax Proceeds

1937-38

1938-39

and so Rs. 125 lakhs were actually distributed. At the end of the year, however, the actual balance available for distribution turned out to be Rs. 163 lakhs. The additional Rs. 38 lakhs were carried forward in the same account. In the Budget estimates for 1938-39, the sum expected to be distributed among the Provinces was Rs. 128 lakhs ; but on account of a fall in the contribution from the Railway revenue to Central revenue, the actual amount payable to the Provinces came out to be Rs. 1,12 lakhs. This with Rs. 38 lakhs of the last year made the total amount available for distribution to be Rs. 150 lakhs. For the year 1939-40, the sum available for distribution is estimated to be Rs. 178 lakhs.

Need
for
further
help

Thus a share from the Income-tax proceeds is a very welcome help to the Provinces, but this cannot satisfy them as it is not adequate to meet their pressing needs. The problem, therefore, remains, and something must be done in this direction in order to take out the Provincial Governments from a tight corner. This can be done by rationalizing expenditure of the Central Government, reducing the huge expenditure on defence, if, of course, there is no danger to India from war, thereby releasing more sources of revenue to the Provinces.

Working of
the Gentle-
man's Agree-
ment

The Governors and the Ministers.—After finance may be taken up the relations between the Provincial Governors and the Provincial Ministries and the Legislatures. As has been stated before, a strong objection was taken to the Special Powers vested in the Governors under the Act, and a sort of assurance was demanded that those powers would not be exercised by the Governors in connection with the constitutional activities of the Ministers. This resulted in a sort of Gentleman's Agreement to which reference has already been made. It may be said that on the whole the Agreement has worked well and the parties to the Agreement have played their part honourably. Generally speaking, the Governors allowed their Ministers to carry on their programmes without any interference on their part. They did not use their discretion and individual judgment against the advice of the Ministers. As far as it is known, no Ordinance was issued against the advice of the Ministers, though some Ordinances—two in Bengal and one in Madras—were issued on the advice of the Ministries concerned. In Assam, before the advent of the Congress

Government, the Governor used his Special Powers for certifying as essential expenditure salaries of the establishments of the Commissioners against the expressed wishes of the Legislative Assembly. In the North-West Frontier Province, the Tehri Bills, which were passed by the Assembly, were sent back by the Governor with certain amendments. For a time, there was a danger of this resulting in a ministerial crisis. The Congress High Command, however, decided otherwise, and the Assembly amended the measure as desired by the Governor. The latter also refused his sanction to the repeal of Section 124-A of the Indian Penal Code, but this also did not result in a crisis. On the whole the relations between the Legislatures and the Governors have also been good. At least no political crisis, resulting in re-election of any of the Assemblies, has occurred.

Yet the course of Provincial Autonomy has not been entirely free from political crises. There was a crisis in the United Provinces and Bihar* on the issue of release of political prisoners, which resulted in the resignation of the Congress Ministries. In Orissa†, a ministerial crisis arose on the appointment of an I.C.S. officer subordinate to the Ministers as the Governor of the Province in a leave vacancy. In both the cases the parties did not take up an impossible attitude and therefore the crises were ended without producing serious constitutional deadlocks. In the first instance, there was a compromise solution, and in the second case the permanent incumbent to the office of the Governor got his leave cancelled and thus ended the crisis. It may, therefore, be concluded that the parties are not deliberately trying to create crises. There is no attempt on the part of the Congress Ministries to wreck the Constitution, while there is no desire on the part of the Governors to stand in the way of the day to day functioning of the administrations on the lines desired by the Ministries.

The Legislatures.—The Legislatures, on the whole, have also functioned well. They have shown a surprising sense of responsibility and aptitude to carry through programmes of reforms. With certain exceptions, the Members have behaved well and have tried to understand the working of the parliamentary

Relations
with the
Legislatures.

Political
Crises

In U. P. and
Bihar

In Orissa

No attempt
to wreck the
Constitution

Surprising
sense of re...
ponsibility

* See p. 142. † See p. 134.

system of government. This, however, does not mean that there were no scenes in the Legislatures. The Assembly of the Punjab specially distinguished itself in this respect so that it was considered necessary to pass a Sergeant-at-Arms Bill, providing for the appointment of a Sergeant-at-Arms to remove members from the House at the discretion of the Speaker.

Punjab **Party Changes.**—There occurred a number of changes in the composition of the parties resulting in certain cases in ministerial changes. In the Punjab Assembly, some members have changed seats from the Treasury Benches to the Opposition Benches though this has not resulted in a ministerial crisis. In Bengal, a number of members changed sides so that the Huq Government was left in a precarious condition. In Assam, the same thing happened, which resulted in the establishment of a Congress Coalition Government in the Province. In the North-West Frontier Province Legislature, similar changes also resulted in the establishment of a Congress Government. In the Sind Legislature, there were, perhaps, more changes than anywhere else, which resulted in a number of ministerial changes. It may, therefore, be concluded that the fear that the composition of the Provincial Legislatures is such that it will not be possible to have stable Ministries has proved to be real in certain Provinces while it has proved to be false in others. In the Provinces of Madras, Bombay, Bihar, Orissa, United Provinces, Central Provinces and Berar, and the Punjab, the ministerial parties have got solid majorities and therefore the Ministries enjoy a strong position. In these Provinces, therefore, there have been few ministerial changes under pressure of the Opposition, though there have been some changes on account of internal causes. This happened especially in Central Provinces and Berar where an Hon'ble Minister, Mr. Sharif, had to resign because he was found guilty of a serious error of judgment, and where the Premier, Dr. Khare*, had to go because he was considered guilty of indiscipline by the Congress High Command to which he owed allegiance. In the United Provinces, as well, Mr. Peayare Lal made way for Mr. Sampurnanand. In the remaining Provinces of Bengal, Assam, Sind, and the North-

Bengal

Assam

North-West Frontier Province

Sind

Stable Ministries

Ministerial Changes

Unstable Ministries

Bengal

* See p. 140.

West Frontier Province, the position of the ministerial parties has never been very strong and hence there have been a number of ministerial changes. In Bengal, the Government of Hon'ble Mr. Fazal-ul-Haq commands a precarious majority, though the no-confidence motion against it failed. In Assam, the Saadullah Government had to resign, and the Congress Coalition Government under Hon'ble Mr. Gopinath Bordoloi came in power. The latter has also got a bare majority though it survived a no-confidence motion. In Sind, the Ministry of Khan Bahadur Allah Bakhsh had a chequered career with a changing following and is even now not on very sound footing. In the North-West Frontier Province, Sir Abdul Qayum's Ministry was defeated giving place to a Congress Government under Dr. Khan Sahib. The latter depends for its majority on the support of its allies and therefore its position is not as strong as that of some other Congress Ministries.

Bengal

Assam

Sind

North-West
Frontier
ProvinceNot very
happy
relations

The Ministerial Parties and the Opposition Parties.— Another important issue brought to the surface by the working of the Provincial Autonomy is the relation of the ministerial parties with the opposition parties in the various Provincial Legislatures. It is rather unfortunate that these relations have not been happy, which shows that our legislators do not understand the essentials of the working of the parliamentary system of government and specially the real and true functions of the Opposition in the Legislature. On the one hand, it has been seen that in the Legislatures where the ministerial parties command overwhelming majorities and the Opposition is very weak, proper attention has not, sometimes, been paid to the views and interests of the Opposition minority and even steam-roller methods have been used in order to carry out the official programmes. This is not right because it produces feelings of distrust, disappointment and even resentment among the members of the Opposition minority in the House. The last-mentioned lose all sense of responsibility and fairness and begin to create disaffection against the Ministry by clouding of issues. In India, on account of the system of election and other reasons the party cleavage generally is on communal lines. Where the Government is preponderantly Hindu, the Opposition is preponderantly Muslim, and *vice versa*. The absence of proper treatment of the members of the Opposition in the House and political disappointments have

Proper respect not shown to the views of the Opposition

**Raising of
Communal
Issues**

often been given communal colour so as to poison the atmosphere both inside and outside the House. Thus the ministerial parties must understand that the Opposition has to play an important part in the deliberations of the House. It should be properly treated and allowed a proper voice in the deliberations of the House. Attempt should also be made to consult the Opposition on important legislative measures and matters of policy so as to resolve the differences to minimum thus avoiding unnecessary unpleasantness. This, however, cannot be done when there is a difference of principles and ideologies.

**Duty of the
Ministerial
Parties**

On the other hand, the Opposition should also understand its true function. It is certainly in the House to oppose the party in power and to occupy the latter's place if it is able to reduce the latter's majority to minority. This, however, cannot be the only object of the Opposition. It is in the House as much to serve the national cause as the ministerial party, and if it can do that out of office better than in office, it must not hanker after office. Its more important and useful function is to see that the Government does not go wrong, and to press for the adoption of its own programme by the House. It must give co-operation to the Government when the national interest demands that. As long as it is able to achieve this, it is performing its function well.

**The true
of the
Opposition**

If, on the other hand, it finds that there are fundamental differences between it and the Government and that the latter is not amenable to reason, it must try to reduce the Government strength so as to assume the responsibility for running the government not with the idea of satisfaction of personal ambition, but with the idea of service. If the experiment of self-government is to succeed in India, it must be very clearly understood that the ministerial office is not an end by itself but is a means to an end, which is the service of the nation. The party in power must be ready to leave office whenever the proper occasion for it arises. It must not try to keep in by means, fair or foul, thus retarding the constitutional advance of the country. Hon'ble Mr. Sri Krishna Sinha, the Premier of Bihar, gave expression to similar ideas in a speech* delivered at Patna on August 17, 1938. He stated :—

**No
hankering
after office**

**Office
means to
an end**

**Views of
Hon'ble Mr.
Sri Krishna
Sinha**

* Reported in the *Tribune*, dated 19th August, 1938.

"We all recognize that while a democratic form of Government, such as the one we are trying to establish in our country, has generally to be conducted on party lines, yet it is essential that in the Legislature there should be an underlying fundamental unity of purpose between the Government and the Opposition; and though, in our every day work, it is the duty of the Opposition to oppose the measures of Government, by means of fair and remarkable criticism, still, in times of storm and stress, all parties should combine in the larger interest of the State."

Here is another piece of sound advice by His Excellency Sir George Cunningham, the Governor of the North-West Frontier Province. While performing the opening ceremony of the new Assembly Chamber, His Excellency said on March 17, 1939 as under:—

"..... Healthy party rivalry is a stimulant both to statesmanship and to good administration. But some things should be above party politics, not because they belong to no party, but because they are common to the interests of all parties and of the whole people. The peace and orderly government of the province, the equality of treatment for all classes, the maintenance of impartial and contented public services are the concern of all, of parties in power and parties in opposition. If they are to be brought in issue between parties at all, this must be done on questions of wide principle, and not for purposes of temporary tactical advantage.....

" Even when party rivalry is acute and the struggle for votes is tense, the canons of Parliamentary practice are to be respected. Criticism that is merely destructive and opposes simply for opposition's sake is an impediment and not—as it should rightly be—a stimulant to the progress we all desire. On the side of the party in power there must be readiness to seek, on the side of the opposition readiness to give, co-operation. Democracy has always made this demand of its adherents, and the history of many countries tells us how often, in times of anxiety and stress, this demand has been loyally fulfilled....."

If this is done, much unnecessary unpleasantness will be avoided and maximum good will be done to the country.

No Political Parties.—Unfortunately, parties, organized on true political or economic lines, have not as yet risen in the country. The Congress is perhaps the only organized all-India political party, but even that is distrusted by a section of the Mussalmans. The Muslim League and the Hindu Maha Sabha parties are frankly communal, and therefore, cannot inspire universal confidence. Even such parties, as the Unionist in the Punjab and Proja groups in Bengal, which are professedly organized on economic lines, are preponderantly communal in composition. Thus the parties are organized or are believed to be organized on communal lines, though there is clouding of issues. These parties,

His Excellency the Governor of North-West Frontier Province on the functions of the Parties

Communal Parties

No work on national lines

with the possible exception of the Congress, more often than not, do not work on national lines, but try to secure communal or sectional interests and therefore cause a good deal of political, economic and communal discontent in the country. Democratic self-government of the parliamentary type can only function through political parties, and therefore in our country the experiment is not an unqualified success, as it should be.

Intensification of the Problem

The Communal Problem.—As a matter of fact, the working of Provincial Autonomy has intensified the communal differences or the minority problem in the country. The most important aspect of the problem is the Hindu-Muslim question. There is mutual distrust between the communities which keeps them apart. Both the communities do not like to be dominated by each other, and hence are apprehensive of the designs of each other. The communal-minded members of the majority community think that the members of the minority community do not regard India as their home, are not prepared to do any sacrifice in the cause of her freedom, and are always thinking of apportioning India into Hindu India and Muslim India, thus standing in the way of the evolution of the united Indian nation. On the other hand, the communal-minded members of the minority community think that the majority community is aiming at its complete absorption politically and culturally. It, therefore, demands the recognition of certain rights. It is not satisfied by the working of the safeguards for minority rights in the Constitution Act, and therefore demands the provision of further safeguards. Some have gone so far as to say that from the Muslim point of view the Constitution has proved a failure in the Provinces. For instance, Sir Muhammad Yakub in a statement issued on July 5, 1939 wrote as under:—

“Muslims of all India, of all shades of political opinion, are agreed on this point that the present constitution, so far as the experience of autonomy in the provinces goes, has proved not only a failure but distinctly disadvantageous and derogatory to the Muslim interests in India.....”

Failure of the Congress

Thus the communalists on both ends stand poles asunder, and cannot come nearer. The Congress, which tries to solve the problem, has so far failed in its efforts. On the other hand, the functioning of the Provincial Governments on wrong lines is at least partly responsible for intensifying the communal

Views of the Majority Community

Views of the Minority Community

Safeguards for Minority rights

problem, both inside and outside the Legislature. The mutual distrust has increased to such an extent that every measure of the Government in power is judged from the communal point of view. There is no attempt to consider it from the national view point. Nobody cares to understand the view point of the other party, and there is no attempt at compromise. As the Government majorities in most of the Provinces—generally dominated by Hindu or Muslim members—are unalterable by ordinary constitutional methods, therefore even on the slightest provocation there is a talk of direct action and *satyagraha*. When this opposition starts, even if it be for economic or political reasons, it soon assumes a communal colour and excites communal passions. This endangers public peace and prosperity. This happened in the Central Provinces and Berar, where the Muslim League started *satyagraha* in order to give expression to its opposition to the *Vidya Mandir* Scheme of education. In Madras, there was a *satyagraha* against the introduction of compulsory teaching of Hindi in schools. In the Punjab, the Agrarian Bills controversy assumed a communal colour. In Bengal, the no-confidence motion against the Ministry was given a communal colour. There was also a talk of direct action regarding the question of the release of political prisoners in that Province. In the United Provinces, the *Mahde-Sahaba versus Tabarrā* controversy, involving direct action by the parties concerned, is another form of the malady of communal distrust and sectarian intolerance. In Bombay, the levy of the Property Tax to finance the Prohibition scheme was given communal colour. Thus the Provincial Autonomy has fed the demon of communalism. It is getting strong and clogs the way to political progress of the country. It must be killed, if the country is to be saved.

This can only be done by finding out some permanent solution of the minority problem in the country. The majorities in different Provinces must revise their attitude towards minorities so as to win over their confidence and trust. On the other hand, the minorities themselves should begin to examine if there is anything wrong in their attitude and way of thinking. It has been urged, specially on behalf of the Muslim minority, that the safeguards—the Governor's Special Responsibility, the separate

Manifesta-
tion of
communal
distrust

Need for
solution

The failure of communal safeguards

communal electorates with weightage and special representation, the reservation of percentages in the Public Services, etc.,—incorporated in the Constitution to protect its interests have failed to achieve their end. There is, therefore, a demand for further safeguards. But mere piling up of the safeguards cannot and will not solve the problem. Something else is necessary; and that is mutual understanding and trust. Unless that is created, the minority problem will remain in one form or another in spite of a heap of safeguards. On this side lies the permanent solution of the problem. When the other method has failed, this one should be tried.

The solution

Fears falsified

The Public Services.—On the whole the Public Services have played their part well under Provincial Autonomy, thus falsifying the fears entertained about them. They have co-operated with their political masters in carrying out their new policies and revolutionary reforms. They seem to have adapted themselves to the new conditions set up by the new Constitution. It must be admitted, however, that this has not happened without some difficulty. Some I.C.S. men found it difficult to pull on under the new conditions and therefore resigned; but their number is surprisingly small. Moreover, in certain Provinces, notably in North-West Frontier Province and Assam, complaints against some members of the Civil Service about lack of co-operation with the Governments of the day have also been made. It is not possible to say how far these complaints are true; but if they are based on fact, it is very unfortunate. The Services must be made to realize that it is their foremost duty to give willing co-operation to and carry out the policy of the Government of the day. They cannot have any policy of their own, and must regard the policy of the Government in power as their own.

Participation in party squabbles

Need for regarding the influence and salaries of the public servants

In certain cases high officials are believed to have taken sides specially in helping to keep in or turn out of office a particular party. This must be stopped because this places the Ministers under obligation to their subordinates and encourages corruption and indiscipline. The public servants, therefore, must be kept apart from party squabbles and should observe strict neutrality.

It is clear that the Services still dominate the Provincial administrations. This is due to the

privileged position assured to them under the Act. There is a need for a change in this direction. Further, the Services still consume a considerable part of the Provincial Budgets in disproportionately high salaries. A concerted attempt must be made to reduce them so as to find more money for some other useful work. There is also a great scope for change in the attitude and tone of the Services towards their real masters, the masses.

Provincialism.—The working of Provincial Autonomy tends to intensify "Provincialism." The danger is inherent in all Federations; but if it is not checked in time, it produces undesirable results. The danger is very real in the case of our country which is not yet a strong, and unified nation. If Provincial jealousies, differences, and interests are allowed free scope, there will be a lot of waste of energy and resources. This will retard progress. Moreover, instead of becoming a unified state, the country will become a congeries of states with conflicting interests.

This danger has made some patriotic people think furiously. Mr. Jamshedji Mehta in a letter to Mahatma Gandhi wrote :—

" After the introduction of provincial autonomy one is pained to observe the growth of provincial exclusiveness and jealousies in matters big or trivial. I often wonder if provincial autonomy has not come upon us as a curse rather than a blessing. Instead of the nationalistic spirit having increased, provincial exclusiveness seems to have flourished. Before autonomy my country used to mean India. Now it means " my province. "

Mr.
Jamshedji
Mehta's
views

Commenting on this, Mahatma Gandhi observed—

".....Provincialism of a healthy type there is, and always will be. There is no meaning in having separate provinces, if there are no differences, though healthy, between them. But our provincialism must never be narrow or exclusive. It should be conducive to the interest of the whole community, of which the provinces are but parts. They may be linked to tributaries of a mighty river. The tributaries promote its mightiness. Their strength and purity will be reflected in the majestic stream.

It must be thus with the provinces. Everything that the provinces do must be for the glory of the whole. There is no room for exclusiveness and jealousy between province and province, unless India is to be dismembered into warring countries, each living for itself and if possible at the expense of the rest. The Congress will have lived in vain if such a calamity descends upon the country....."

Mahatma
Gandhi's
Remarks

Thus in the interest of united nationhood, this tendency must be checked, and inter-provincial collaboration and co-operation must be encouraged.

The feeling of "Provincialism" has also taken the shape of a demand of certain distinct linguistic

Creation of Provinces on linguistic basis

groups in some bilingual Provinces, like Bombay and Madras, to seek opportunities of self-expression and self-governance by separating themselves from their respective Provinces. The question requires mature consideration and cannot be easily disposed of one way or the other. It is true that the present day Provinces of India are relics of history and do not follow any rational lines of division. Again it may be admitted that the division of Provinces on linguistic lines is natural enough. But there are other questions, like that of finance and administrative convenience, involved, which must be carefully studied before arriving at a solution. The Indian National Congress has, generally speaking, expressed itself in favour of the proposal, but the British Government seems to be opposed to it.

The Muslim League

The Congress

Need for discipline and control

The Parliamentary Sub-Committee

The Provincial Parties and their High Commands.—Another issue, that has often claimed the attention of the students of the working of Provincial Autonomy, is the relations of the Provincial parties with their High Commands. There are two all-India political parties, the Muslim League and the Congress, which claim allegiance of political parties in the Provincial Legislatures. The Muslim League claims the allegiance of some weak Opposition parties in the Congress-governed Provinces and in Sind, and the allegiance of the ministerial parties in Bengal and the Punjab. It is observed that the control of the All-India Muslim League over these parties is not very effective or strict, and the Provincial parties, in actual effect, can do whatever they like. The case of the Congress is different. It claims the allegiance of eight out of eleven Provincial Ministries, and in the remaining three Provinces commands the allegiance of important Opposition groups. Moreover, it is an effective all-India organization, with an all-India programme of reforms and reconstruction. It aims at attaining complete freedom for India, and has not yet stopped its fight against British imperialism. It has not even finally given up the policy of ending the Constitution Act under which it is running the Provincial administrations. Under the circumstances, it cannot allow the Provincial Ministries to go their own way but has to enforce discipline in the interest of uniformity and in order to check fissiparous tendencies. It, therefore, maintains a Parliamentary Sub-Committee to control the Congress Ministries.

There is no denying the fact that this control is absolutely essential, if the Congress is to remain an all-India body. Incidentally this control from one place assures uniformity of policy and interests among at least eight Provinces, and thus tends to preserve the unity of India safeguarding it against narrow provincialism. While this is right, it has been asserted that the control of the Parliamentary Sub-Committee is dictatorial and that it does not allow sufficient liberty to the Ministries to manage their own affairs. The question came before the public as a result of the Khare episode.* This has been denied on behalf of the Committee which maintains that it exists to guide, co-ordinate, and control the Provincial Ministries and not to stifle their liberty of action. It is not possible to take sides on the point; it must suffice to say that the relations between the Committee, which is itself subject to the Congress Working Committee, and the Provincial Ministries should be such that the initiative of the latter must not be killed. There should only be a general supervision in the interest of uniformity and co-ordination, rather than control so that the Ministries may be controlled by the parties in the Legislatures.

The Ministries and the Congress Organizations.—Another question has also arisen in respect of the mutual relations of the Ministries, the Parliamentary parties, and the Congress organizations in the Provinces. It is clear that if the Congress Committees interfere in the day to day activities of the Ministries, no work will be possible. The Ministries can only work in general co-operation and consultation with them. The All-India Congress Committee has recently adopted a resolution to that effect.

The Unsolved Problems.—Thus works Provincial Autonomy. There are obstacles and difficulties, old and new, which beset the path of the constitutional advance; yet our Ministers are making the best of a bad bargain and trying to get as much out of the authority transferred to them as is possible under the circumstances. Misgivings and evil forebodings about the success of the responsible Ministries have been falsified. The Congressmen, who were new to the task of governance, have proved their mettle.

Advantages

Only a general supervision required

No interference in the day to day activities.

Misgivings falsified

* See p. 140.

Pt. Jawahar
Lal on the
work of the
Congress
Ministers

Much
remains to
be done

According to Pt. Jawahar Lal Nehru, the Congress-Ministers—

"have worked faithfully and unceasingly for India and for the cause for which the Congress has laboured, and if the success that has come to them has not been as great as we hoped, it is foolish and uncharitable to cast the blame on them. Their achievement has, indeed, been considerable and worthy of pride."*

The same may be said about some of the non-Congress Ministers. Yet it must be admitted that much remains to be done. Unemployment among educated and uneducated people is still there in the worst possible form. Vast numbers of people in both rural and urban areas are still illiterate and ignorant. Rural uplift movements have yet only touched the fringe of the problem. Our villagers lead most miserable lives, socially as well as economically. The Scheduled Castes are still economically and socially backward. Economically the condition of the masses is simply unspeakable. Not much has so far been done to establish key industries and to improve the general industrial condition of the country. On the administrative side, the outlook of the Services is not yet entirely changed. Lastly, practically nothing has been done to give military training to the Indian youth so as to give him self-confidence and enable him to stand in the defence of his country. In the present tense situation in the world, this amounts to almost criminal negligence.

Limitations of Provincial Autonomy.—Thus the Augean stables in India have only partially been cleared, and yet the Provincial Ministries have begun to feel a little helpless on account of the limitations of Provincial Autonomy. It should be remembered that the powers and resources of the Ministries are not unlimited. They work under various handicaps. Their powers rest more on the Gentleman's Agreement than on the Statute. Constitutionally the Governor is still the actual head of the administration in the Province. He can preside over the meetings of the Cabinet. His powers of discretion and individual judgment are still there and can be exercised, if necessary, though that may lead to a ministerial crisis. He has a separate establishment of his own. The Secretary of State and the Governor-General still stand in the background. The Services are largely

Handicaps of
the Ministers

* *Tribune*, April 1, 1939.

beyond the reach of the Ministers. A large amount of expenditure is fixed, because it is charged on the revenues of the Provinces. While the sources of revenue are insufficient and inelastic, all the paraphernalia of the costly administration has to be maintained, though it means starving the beneficent departments. Above all, the demon of communalism, which in its present form was brought into being by the communal representation, is kept alive and nourished by politicians with unsatisfied political ambitions. On account of all this the Provincial Ministries seem to feel helpless.

The Future.—This tends to create the impression that the Provincial Autonomy is rapidly exhausting its possibilities. The impression, if allowed to gain ground, is likely to produce unfortunate results. It may lead to political discontent and abandonment of the constitutional experiment altogether. Something must, therefore, be done immediately to remove this impression and to re-establish hope among the impatient. This can only be done if the bounds of Provincial Autonomy are expanded by the removal of limitations. Specially something must immediately be done to increase the financial resources of the Provinces. The responsible Ministers should also be allowed more freedom of action to give a practical shape to their revolutionary schemes.

Expansion of
the scope of
Provincial
Autonomy

A word may also be addressed to those who are getting impatient. They must try to understand that the work of reform, in order to be permanent, must be slow. Moreover the mischief of centuries cannot be undone in days or even months; it must take at least years. They must not, therefore, get too restive, because this might force the hands of the Ministries and precipitate crises. This cannot be of any good to the country because this would mean the failure of the constitutional machinery, through which some good is being done and more is likely to be done to the masses. If the Indian Revolution is to work itself out through a series of evolutionary changes, the constitutional experiment, which has been undertaken, must not be allowed to fail.

Need for
Patience

Need for
making the
Constitutional
Experiment a
success

CHAPTER XXII.

EPILOGUE

The Present and the Future

The Nature of the Indian Federation, Structure of the Indian Federation ; Shortcomings of the Scheme ; No Provision for Future Growth ; The Unwanted Constitution ; New trend in Muslim Politics ; Making Federation Safe for the Muslims ; The Muslim Alternative Schemes ; The Pakistan Scheme ; The Confederation of India : Dr. Abdul Latif's Scheme ; The Zones ; The Hindu Zones ; Other Minorities ; Transitional Period ; Safeguards for the Muslims ; Merits of the Scheme ; Criticism ; Mr. Asadulla's Amended Scheme ; Sir Sikandar Hyat Khan's Scheme for the Federation of India ; Division into Zones ; The Regional Legislature ; The Federal Legislature ; The Federal Executive Advisory Committees for Defence and External Affairs ; The Federal Railway Authority ; Safeguards ; Composition of the Indian Army ; Criticism ; the Merits of the Official Scheme ; Demand for Amendments ; Wrecking the Constitution ; Need for Constitutional Conventions ; the Opposition of the Muslim League ; the Opposition of the Princes ; Need for Immediate Action ; the Present Position ; Suspension of the Work regarding Federation.

A Unique
piece of
political
architecture

Interplay of
different
interests

The Nature of Indian Federation :—The scheme of the Federation of India as adumbrated in the Government of India Act 1935 is a "unique piece of political architecture." It does not follow any prevalent type of federalism, and has no parallel in history. This is due to the fact that the scheme is the result of action and reaction of various forces and interests—British Imperialism, Indian State Autocracy, Indian Sectionalism and Indian Democratic Nationalism. All these interests emphasized their needs and tried to secure them at the Round Table Conference. Thus the result was a hybrid product lacking in design and pattern. Instead of having a proper equipoise of forces and interests, the scheme reflects the influence and power of each interest mentioned above. British Imperialism, represented by the strong man of the British Cabinet, Sir Samuel Hoare, was the strongest influence and worked for safeguarding British interests in India as well as conceding as little as possible to Indian Nationalism. Indian States Autocracy, represented by the Indian Princes and their advisers and specially by Sir Akbar Hydari, was interested in safeguarding the prevalent mediæval and feudal conditions in the States particularly against the onrush of modern democratic

ideas from the British Indian Provinces. It demanded as great a voice as could be possible to secure for the settlement of issues in the future Federation so as to dilute British Indian Democracy. Indian Sectionalism, represented by Sir Muhammad Shafi, Dr. Ambedkar, etc., was more interested in safeguarding sectional interests under the new conditions by demanding separate electorates, weightages, and other safeguards at the cost of the majority community, the Hindus, than in seeking a real democratic advance for the whole country. It was only Democratic Nationalism, represented by Sir Tej Bahadur Sapru, that was really interested in a genuine constitutional advance for the country towards Dominion Status. It had to work against heavy odds, represented by a virtual alliance of the other three interests. Being alone and weak, it had to make sacrifices and concessions to others and was thankful for what little it was able to achieve. But even this little is so much hedged in by safeguards that in its final form the Constitution is ultra-conservative.

All Constitutions must be based on the realities of the situation, and the Indian Constitution can be no exception. According to Lord Lothian,

"The new Act, with all its defects and anomalies, corresponds far more closely to the present day realities in India than its Indian critics are willing to admit."*

But it is clear to all discerning eyes that for the purpose of the new Constitution, these realities were magnified out of all proportion to their importance in order to reduce the value of another reality—the desire of the Indian Nation to achieve *Swaraj*. The framers, therefore, started wrongly and could not go on the right road to reach the right goal. They spent their intelligence and ingenuity in building barricades on the very road on which they ought to have travelled. The result, in the words of Dr. B. R. Ambedkar, Leader of the Independent Labour Party of Bombay, is that the Federal Constitution, which they forged, is "wrong in its conception and wrong in its basis."† Such a scheme cannot commend itself to progressive nationalist opinion in the country.

Ultra-conservative Constitution

Realities of the situation

Wrong in conception and wrong basis

* Reuter's message from London.

† Statement reported in the *Tribune*, dated July, 21, 1938.

A Federation of British India and the Indian States

No political homogeneity or uniformity

Conflict between autocracy and democracy

Structure of the Indian Federation.—From the structural point of view, the Federation of India is essentially the result of the working of two principles, the territorial or regional Federation and social or communal Federation. From the former point of view, it is a Federation of British India, comprising British Indian Provinces, and the so called Indian India, comprising Indian States. The Federation, however, is not between British India as one single unit and Indian India as another unit. This was considered but was rejected as this would have kept the two units perpetually in conflict within the Federation. The Federation, therefore, is between the individual British Indian Provinces and the individual States, however big or small they may be. It has nothing to do with the internal autonomy of the units and specially the States, except in respect of the sphere of administration handed over to Federal control. There is no attempt at assuring political homogeneity and uniformity among the federating units. Thus the mediæval feudalism and autocracy of the Indian States have been allied to modern nationalism and democracy of the British Indian Provinces. Moreover while the representatives of the States are to be nominees of the Princes, the representatives of British India are to be elected by the Provincial Legislatures. The Federation, therefore, is to consist of disparate elements and is

"an ill-assorted group of states and provinces, differing widely in their status and forms of government, and in the general complexion of the population inhabiting them."*

Political necessity has brought together two strange bed-fellows. How they will pull on remains to be seen. Which will triumph—the autocracy of the States or the democracy of British India? Will there be a perpetual struggle between the two? Will the autocracy of the States prove only a balancing factor by diluting the strong dose of British Indian democracy, or will it try to retard all progress by combining itself with the reactionary element from British India? All these are questions which agitate the minds of Indians, but cannot be answered immediately. Only time can furnish answers to them. The States are professedly coming in the Federation of India "to inspire England with sufficient confidence to entrust to India the management of her own affairs" by functioning as a balancing and

*Punjab, K. V. : India as a Federation, p. 193.

stabilising factor in the future Federal Legislature. On the other hand, British India thinks that they are coming in to safeguard their own autocracy and to serve the interests of British imperialism. The dice is certainly loaded against British India. The States have been given additional weightage in the Federal Legislature. Although their aggregate population forms 23% of the population of India, yet they have been given 33% representation in the Lower Federal House, and 40% in the Upper Federal House. The transfer of a small number of subjects to Federal control, which may differ in the case of individual States, the power of carrying out Federal laws through their own agency, the power to discuss and determine purely British Indian questions such as the rate of Income-tax while the representatives of British India are debarred from discussing questions not ceded to Federal control, the safeguards protecting the rights and dignity of the Indian Princes, and lastly the recognition that *paramountcy* in respect of the States vests and shall continue to vest with the British Crown are calculated to strengthen their position *vis-a-vis* British India. It is feared that they will use their influence on the side of reactionary forces. According to Professor Keith,

" India would have secured genuine democracy by a process of showing in the Provinces a capacity to work the Constitution, but as a result of the errors of both British and Indian politicians, a Federal structure is now provided which creates a permanent conservative and even reactionary Central Government and Parliament by calling in the autocratic rulers to nullify the votes of British subjects.....Many of the complications and defects of the Federal Constitution are due to the unnatural comingling of Freedom and Autocracy."

Mr. Subhas Chandra Bose emphasized the same point when he declared*—

" The Federation, as conceived in the Government of India Act, is a cunning device of British statesmen to perpetuate the slavery of India by wedging democracy with the feudalism that obtains in most of the Indian States."

This is how British India looks at the position assigned to the Indian States. It is clear that it distrusts the latter and is in turn distrusted. Thus the idea of All-India Federation has not brought the parties a whit nearer than they were before.

Favourable position of the States

Effects of the States' entry in the Federation

Dr. Keith's views

Distrust between the Parties

A Federation of Communities

Mutual Distrust

Concessions to Muslim Union

Loss to the Majority Community

From the second point of view, the Federation of India is a union between the various communities of India—the Hindus, the Muslims, the Sikhs, the Christians, the Jains, the Parsis, etc. The Hindus form the majority community, while the Muslims form the chief minority community. That there is a distrust between the two is clear to all. Self-seekers and misguided persons on both sides have done everything possible to widen the gulf so that there seems to be developing a difference in outlook, aims, and ideologies. While majority of the Hindus believe in a united India, some of the Muslim statesmen seem to be working for a Muslim India and a Hindu India, which may confederate, if possible. In the Federation, the Muslims are afraid of Hindu domination and of losing their identity. They, therefore, demanded safeguards to protect their interests and to assure that their importance should not reduce. This demand was conceded to a considerable extent. Some new Provinces were created to give them two more Muslim majority Provinces. Although their population is much less, yet they have been given one-third of the total British Indian representation in the Lower Federal House. The Governor-General is vested with the Special Responsibility for the protection of the Minorities. He is instructed in his Instrument of Instructions to see that the representatives of the Minorities are included in the Federal Cabinet. All this was done to assure the Muslim community, but the majority community suffered in the process. The weightage to the States as well as to the Minorities is at the cost of the Hindus, who, though having an overwhelming majority as far as population is concerned, is reduced to a minority as far as their representation in the Federal Legislature is concerned. In the Lower House with a total membership of 375, the member of the representatives of the Indian States will be 125, thus leaving 250 for British India. Out of this 250, the number of General seats, which are virtually Hindu seats is 105, while the Muslim seats are 82. The Council of State will have a total membership of 260. Out of this 104 seats are allotted to the Indian States. Out of the remaining 156 seats, 75 are Hindu seats and 49 Muslim seats. Thus the Hindus have been reduced to a minority in the Houses, though they are in majority outside. Too much stress, however, need not be laid on this point in

the interests of Indian solidarity, but it is rather unfortunate that the Minorities, and specially the Muslim Minority, are even now not satisfied. The Muslims demand further safeguards, specially an increase in the representation in the Federal Legislature. If this demand is conceded, the Hindus will be reduced to the position of a hopeless minority which is certainly against all canons of justice and fair play. Yet the Federation of India, with Hindu majority Provinces and Muslim majority Provinces and a Centre representing all interests and communities and serving as a co-ordinating and unifying link, is an ideal solution of Hindu-Muslim problem.

Ideal solution of Hindu Muslim problem

Shortcomings of the Scheme.—The Federal scheme as adumbrated in the Government of India Act, 1935, is full of shortcomings and defects from the point of view of Indian nationalism. It has been assailed on various grounds. To begin with, the sovereignty of the people of India is not recognized. The supremacy of the King-in-Parliament is retained. The theory of the divisibility of the Crown is not applied to India as in the case of the Dominions. In other words India is not under the British Crown alone but is under the British Government—the King-in-Parliament. The authority of the Home Government is to be exercised through a member of the British Cabinet, the Secretary of State for India, except in so far as it is transferred to the people's representatives. The authority and powers of the Secretary of State are still very vast as it is he who is ultimately responsible for the administration of Reserved Departments and Special Responsibilities, for the administration of Special Powers by the Governor-General, and the Governors, and for acting as the guardian deity of the members of the Public Services. The Council of India has been virtually continued in the form of the Advisers. The powers of these Advisers, however, have been reduced so as to make the Secretary of State a virtual dictator in the discharge of his authority, powers, and duties. He thus continues to occupy the position of the Grand Mughal of India. The Secretary of State for India with his present powers, authority, and influence, is a sign of Indian slavery. His presence is galling to Indian self-respect. India cannot be satisfied until this office is abolished or at least its importance is reduced to that of the Secretary of

The Supremacy of the King-in-Parliament

The authority and powers of the Secretary of State for India

the Dominions. It should, however, be remembered that this involves complete transfer of responsibility to the Indian Legislature. As long as there is a partial transfer of responsibility to the Indian Legislature, the control of the Secretary of State for India over the untransferred sphere must continue.

Dyarchy at the Centre

Coming nearer home, dyarchy that failed in the Provinces, is deliberately installed at the Centre. Although the head of the executive will be the Governor-General, yet in essence the executive will be a composite body, made up of the Governor-General and the Ministers. A very important part of the government, comprising the important Departments of Defence, External Affairs, and Ecclesiastical Affairs, is reserved to the discretion of the Governor-General beyond the pale of ministerial advice. There is a further encroachment on the sphere transferred to ministerial control by the formulation of the Special Responsibilities with a very wide range. The powers and authority of the Ministry cover the remaining field, which is very much restricted and narrow as compared with the sphere under the control of the Governor-General.

Powers of the Governor-General

As a matter of fact, the Governor-General possesses a vast array of powers in respect of the Reserved Departments, Special Responsibilities, Special Powers, Powers delegated to him by the British Crown not inconsistent with the provisions of the Act, discretionary powers, emergency powers, powers of enacting Governor-General's Acts and issuing Ordinances, prevention of discrimination in the executive sphere against British nationals and goods, providing for appropriations against the wishes of the Legislature, etc. With these powers in his hands, he is the real executive, though not the sole executive. He is entitled to appoint not more than three Counsellors to help him in carrying out his functions. He can also appoint a Financial Adviser for advising him on financial questions.

The Special Responsibilities

The Federal Ministry will not enjoy considerable powers. Whatever powers it possesses by virtue of the provisions in the Act are hedged in with so many safeguards and restrictions that the substance is taken away and the shadow is left behind. While the responsibility before the country and the Legislature will be that of the Ministry, the power to discharge that responsibility will be lacking. Thus it will present

The Powers of the Federal Ministry

a spectacle of responsibility divorced from power with all its attendant evils.

The Ministry is also expected to be "composite" in the sense that it will contain, as far as possible, representatives of all major communities and the Indian States. Although this is fair from the communal point of view, yet it may not be practicable in actual practice to include all such representatives in the Federal Cabinet. It will stand in the way of the evolution of collective responsibility of the Cabinet. If the latter principle is kept in the foreground, members enjoying confidence of the majority of the members of their respective communities may not be available for inclusion in the Cabinet, as is the case in some of the Provinces. The inclusion of others is likely to cause communal discontent. If, on the other hand, representatives of the various communities are taken in the Cabinet, there cannot be any homogeneity among the members of the Cabinet. In such a case, there cannot be any uniform policy and no important reform is possible.

Moreover, with the composition of the Houses as it is, there is no possibility of any strong and stable Federal Ministry. No party is likely to have an absolute majority in the Legislature. Even the Congress party is not likely to command more than forty per cent. seats in the Legislature and, therefore, cannot hope to command a decisive majority though it may form the single largest party in the House. An alliance between the representatives of other interests—the Indian States, the Muslims, the Europeans, the Anglo-Indians, etc., representing the remaining sixty per cent. can form a coalition government even against the opposition of the Congress. There is, therefore, great likelihood of weak Cabinets and frequent ministerial changes.

The position of a progressive Cabinet is further weakened by making it responsible to both Houses. The Upper House, which will represent the vested interests in the country and will not be subject to dissolution, is likely to cast its influence on the side of the slowing down the pace of progress. It is perfectly clear that a progressive Ministry will find it very difficult to pull on with such a House, and yet it depends upon its vote. The Ministry cannot make any appeal to the country against the decisions of this House as it is not subject to dissolution. Indeed "an appeal to the country," even in the case

The 'Composite' character of the Ministry

No possibility of the formation of a stable Ministry

Responsibility of the Ministry to both the Houses

No possibility of the functioning of a progressive Ministry

of the Lower House, is more or less a misnomer because there is no single electorate spread over the country but a number of electorates, about seventeen in all—Hindu, Muslim, Sikh, Indian Christian, European, Women, Labour, Commerce, etc. Thus there is no likelihood of the functioning of a progressive Federal Ministry. Whatever Ministry might function, it can be effectively controlled by the representative of the British imperialism in his capacity of the Crown Representative by commanding the votes of the nominees of the Indian Princes against it.

The Upper House

The Federal Legislature will be bicameral, comprising the Council of State and the Federal Assembly. Against all precedents, it is the Upper House that is to be directly elected and not the Lower House. But the franchise qualifications are pitched so high that even this House can represent only vested interests in the country. Moreover, it is a permanent body not subject to dissolution, only one-third of its members retiring every third year. As a result of this provision, it is likely to lose contact with the public opinion outside and might become irresponsible to it. The Lower House is to be elected indirectly by the members of the Provincial Legislatures through separate communal electorates. This has been condemned almost unanimously because it is likely to lead to corruption, provincialism in the Federal Legislature, the confusion between the Provincial and the Federal issues, and the lack of contact between the members of the Federal Legislature and their real masters—the people. It is certainly a retrograde and reactionary step.

The Lower House

Indirect Election

Representatives of the States to be nominees of the Princes

These remarks apply only to British Indian representatives and not to the representatives of the Indian States, who are going to be the nominees of the Indian Princes. The Act does not lay down the method of their appointment as it will be the sole concern of the Princes themselves. It has already been mentioned that the States have been given weightage so that their representatives will form 40% of the Upper House and 33½% of the Lower House. In the Lower House the Muslims are allotted one-third of the remaining two-thirds. A few more seats are allotted to some other special interests so that all the Special seats, including the Muslim seats, will be 145 out of 375 or 38½% of the whole House. The General seats number

105 out of 375 or 28% of the whole House. In the Upper House, the number of nominees of the States along with the nominees of the Governor-General will be 110 out of 260 or 42.3%. The Muslims will be 49 out of 260 or 18.8%. Other special interests will claim 20 seats out of 260 or 7.6%. The General Seats will be 81 out of 260 or 31.1%. It will be seen that in the Upper House, the element representing Nominated and Special seats forms 68.7% of the House while in the Lower House it forms 72% of the House. It is clear from this that every attempt is made to reduce the progressive element in the Federal Legislature so as to make it reactionary and conservative in outlook.

But even to such a Legislature, the powers promised are niggardly. In the first instance, it is not a sovereign law-making body as it derives its powers from an enactment of the British Parliament whose authority to legislate for India is kept intact. It has virtually no constituent powers. Certain subjects of imperial interest are specifically excluded from the competence of the Federal Legislature. Certain other subjects require the previous sanction of the Governor-General for their introduction in the Federal Legislature. The Governor-General can himself enact Acts and Ordinances. He can refuse to give assent to Bills, or can reserve them for the signification of His Majesty's pleasure. His Majesty can disallow even those Acts which have received the assent of the Governor-General. Lastly the Federal Legislature is seriously handicapped by the provisions preventing discriminatory treatment against British companies and British nationals. An additional safeguard in the interest of conservatism is that the powers of the Upper House in respect of supply is almost equal to that of the Lower House.

To such a Legislature is responsible the Executive, or to be more exact, the Ministry. The responsibility extends only to the Transferred Sphere and not to the Reserved Sphere, which includes the important Departments of Defence, External Affairs, and Ecclesiastical Affairs. The Transferred Sphere will be further reduced in extent if the Governor-General decides that the matter under consideration involves any of his Special Responsibilities. To that extent the Central Responsibility is further whittled down. As a matter of fact, with all these

Federal
Legislature
made
reactionary

Not a
sovereign
law-making
body

Restrictions
on the
powers of
the Federal
Legislature

Power of the
Upper House
in respect of
supplies

Powers of
the Respon-
sible
Ministry

Central
Responsi-
bility—halting
and
dubious

No grant of
Economic
Swaraj

Transfer of
Finance
hedged in
by safeguards

The
Financial
Adviser

The Charged
Expenditure

restrictions, limitations, and safeguards, the Central Responsibility is halting and dubious. It is, indeed, a misnomer. All this makes the Act "a monstrous monument of shams."

The political *Swaraj* will be an empty husk without the economic *Swaraj*. India, therefore, wants economic *Swaraj pari passu* with the political *Swaraj*. The Government of India Act, 1935, however, does not grant that. Under the new Constitution, the financial powers that are promised to the Federal Ministers are very inadequate. Although the Department of Finance will be transferred to their control, yet it is

"so elaborately fenced round by safeguards and other ingenious devices that it will be difficult for a Minister to move freely and safely though this labyrinth and formulate a policy that will offer opportunities for the free and unhampered exercise of our national ability and energy. Ministers can be checked and controlled at almost every turn and their cherished plans might be thwarted by the *idée fixe* of a stubborn counsellor or a financial adviser steeped in theory and vanity."*

The appointment of a Financial Adviser to the Governor-General by the latter at his discretion is a clear encroachment on the rights of the future Federal Minister for Finance. The expenditure on Defence, External Affairs, Ecclesiastical Affairs, and certain Special Responsibilities and other items is charged on the revenues of the Federation. This expenditure is beyond the control of the Ministers and the vote of the Legislature. It cannot be changed to suit the needs of the policy of the Ministers. The Reserve Bank of India, which would control banking and the currency policy of the country, is beyond the control of the Federal Ministers. The Federal Railway Authority, which will control the huge national enterprise of the railways with its huge outlay, will also be independent of ministerial control. The salaries and pensions of the superior Civil Servants cannot be touched by the Federal Government. All this has the effect of placing a very large amount of expenditure beyond the control of the Federal Ministers. It is estimated that over 80 per cent. of the total expenditure of the Federation will be non-votable and less than 20 per cent. will be votable. Thus the control of the Ministers and the Legislature will be over about 20 per cent. of the total expenditure. Can they

*Dr. Sir Shafsat Ahmad Khan; The Indian Federation, page 35

initiate any new or bold policy under the circumstances? Can they solve the bread problem of India? Can they help in the industrialization of the country? The answer is a clear no. While the responsibility will be theirs, the means to discharge that responsibility will be lacking. With the Provinces clamouring for more financial help from the Centre, their position will become all the more difficult. The only other alternative is additional taxation, for which the country is not prepared.

Awkward Position of the Ministers

Provisions relating to commercial discrimination against British trading interests and nationals in the legislative and executive spheres constitute a great obstacle in the way of India's economic progress. In the first instance, it is the birthright of every country to discriminate in favour of its nationals, but even if this is not conceded in the case of India, there is absolutely no justification for strangulating her economic life under the cloak of preventing discrimination against British interests. British nationals are guaranteed free entry and domicile in India as long as the Indians are guaranteed free entry and domicile in Britain. The British nationals and British trading companies are not subject to discrimination in respect of taxation. British companies carrying on business in India are eligible for subsidies payable to Indian companies. Ships and air craft registered in the United Kingdom are also not subject to discriminatory treatment. The principle of reciprocity, which is provided for in the Act, is devoid of any real value because the initiative for introducing discriminatory legislation is left to the British Government in the United Kingdom and is denied to the Indian Government. Moreover the advantage of reciprocity is entirely on the British side as the number of Indian concerns operating in Great Britain is insignificant as compared to the large number of British trading interests operating in this country. These provisions are manifestly unjust to India. They will make it almost impossible for the Federal Government to initiate any economic policy or bold reform, or to promote or even protect Indian national enterprise against competition from British concerns. Thus India must always remain at the mercy of the foreigners for her economic needs. British imperialism must justify its existence in India by continuing

Prevention of Commercial Discrimination

The Principle of Reciprocity

Economic slavery of India

her economic exploitation. Thus both from the political and economic points of view, the new Constitution of India does not place any real power in the hands of the representatives of the Indian people. It is, therefore, no answer to the demand of the Indian for *Swaraj*.

Rigid and
Inelastic

Little scope
for Constitu-
tional
Conventions

No examina-
tion after a
fixed period

No Provision for Future Growth.--A Constitution for India must contain the seeds for future growth. Either it should be elastic enough or it should contain a provision for automatic expansion or for planned and premeditated expansion towards a well-defined goal after a fixed period. The constitutional scheme of the Government of India Act, 1935, does nothing of the sort. Its provisions are very rigid and inelastic so as to preclude any automatic advance without the sanction of the British Parliament. A real advance will involve amendment of the Act. The Indian Legislature cannot amend the Act except in certain minor matters, and that also through an elaborate and difficult process. It is only the British Parliament that can amend the Act, but even it may do so only in certain cases without affecting the accession of the State. The language of the Act, generally speaking, is mandatory and not optional. There is no provision in the Act providing for automatic expansion, while it is being worked, or after a fixed period. Moreover, if a strict legal interpretation is applied to the provisions of the Act, little scope will be left for the growth of constitutional conventions and understandings. In the old Constitution, there was a provision making it obligatory for the British Government to appoint after the lapse of ten years a Royal Commission to examine the working of the reforms and to report if further advance was necessary. Whatever might have been the defects of the old scheme, it must be admitted that this provision for the appointment of the Royal Commission after a fixed period shows that the framers of that scheme sincerely worked for constitutional advance of India towards her destined goal. There is no provision of this sort in the new Act. It is clear that the framers of the Act were not prepared to bind the British Parliament to the consideration after a fixed period by a Royal Commission or otherwise of the working of the Act with a view to its revision or removal of some of its objectionable features. Everything is left to the circumstances that may prevail in future. Again the

framers of the old Act built 'with strength of design and strength of purpose' and kept in view the fixed goal of Responsible Government for British India, as had been declared in the Declaration of August 20th, 1917. Since then, much water has passed down the Thames and the Ganges. The Declaration of 1917 was authoritatively interpreted in 1929 to mean Dominion Status for India. A number of responsible British statesmen have accepted and even confirmed this interpretation. Yet the Act does not contain any mention of Dominion Status. It does not confer Dominion Status on India, nor does it declare it or accept it as the ultimate goal for India. On the other hand, Sir Samuel Hoare, the then Secretary of State for India, made it clear during the Debates in the Commons that the Dominion Status would not be the next step, nor even the next but one. Thus it is clear that the new Act does not bring India nearer her declared goal of Dominion Status.

No mention of Dominion Status

As a matter of fact, it is suspected that the framers of the new Act wanted to hide the goal of Dominion Status in the mist of uncertainty, and worked for making it a very distant ideal. They could not go back on the promises already given to India, but they could and did interpret them in a different way. It was declared :

Different interpretation of the British Pledge

"As we understand the pledge, it is merely that we shall do nothing inconsistent with that, and shall at such times and in such measures as we consider right, advance towards that goal, and meanwhile remove wherever we are able, the obstacles that stood in the way of future advance."

Thus there is no obligation on the British Parliament and the British nation for a positive effort on their part to help India to attain Dominion Status. Mere indifference or neutrality on their part is not sufficient and cannot satisfy India. The framers of the Act ignored this and refused to formulate a new Preamble to the Act accepting the interpretation of 1929. In order to keep up appearances and to show that they were not going back on the British pledges, they agreed to keep in force with the new Act the Preamble to the Act of 1919, which defined the attainment of Responsible Government as the political goal of India in terms of the Declaration of 1917. This was perhaps an attempt to move back the hands of the political clock by a decade and a half, and could not be aquiesced

No new Preamble to the Act

The Preamble has no bearing to the realities of the situation

The attainment of Dominion Status made difficult by the entry of the States in the Federation

The transfer of Defence to ministerial control

Direct change in relationship with the States

in. Moreover the framers of the Act did not care to note that that the Declaration of 1917 and hence the Preamble to the Act of 1919 had reference to British India alone and not to British India and Indian States taken together. It had nothing to do with the proposed scheme of Federation between two Indias, the red and the yellow.

If anything, the scheme of the Act makes Dominion Status difficult of attainment by India. The coming in of the States complicates the issue. The States' claim that the paramount power in respect to them was the British Crown and not the Government of India was recognized. Paramountcy is irrevocably and in perpetuity the prerogative of the Crown, and is to be exercised through the Crown Representative or the Viceroy. It is to be kept strictly outside the control of the Federation. This makes Dominionhood of India defective. Again it has been demanded on behalf of the Indian States that no further transfer of subjects, which would involve any change in their relations with the Crown, should be permitted to be made to the control of the Federal Ministers without the consent of each State joining the Federation. This has particular reference to the transfer of the subject of Defence involving the control of the Indian army. This question, it is said, is mixed up with the question of paramountcy, as the defence of India involves the obligation on the part of the Crown to protect the Indian States from external aggression and internal commotion. Thus the consent of each individual State joining the Federation is essential before the Department of Defence can be transferred to the control of the Responsible Ministers. Can Dominion Status be possible without the transfer of the complete control on Defence? The answer must be "No." Without the control on Defence policy and the army, Dominion Status will either be a farce or a tragedy, or both. Moreover the grant to the Federation of India of full Dominion Status, with all the powers explicit and implicit in that phrase, is likely to bring some direct constitutional change in the relation of the States with the Federation of India. This the States are not prepared to countenance at present. Thus some of them may oppose the grant of full Dominion Status to Federal India. As long as this is done even by a single Federated State, the obstacle is real and legally insurmountable. Hence it may be

concluded that the new Act does not bring the realization of the goal of Dominion Status nearer. Indeed, some people doubt if it really puts India on the right road to Dominion Status.

To sum up, it may be stated that the Federal scheme as adumbrated in the new Constitution of India is "highly artificial and unnatural."* It is full of defects and anomalies. It is undemocratic and ultraconservative. It does not transfer any power to the representatives of the people. It retards the progress of British India by conceding predominant voice to the Indian States. It does not contain seeds of internal growth. It marks no real advance towards Dominion Status. According to Mr. Churchill the Government of India Bill—now the Government of India Act 1935—"is a gigantic quilt of jumbled crotchet work, there is no theme, no pattern, no agreement, no conviction, no simplicity, no courage in it."

The Unwanted Constitution.—Such a Constitution, in the words of Mr. Satyamurthi, cannot be accepted by India "as a suitable dwelling place for her new consciousness of nationhood." Its defects are so numerous and glaring that it cannot be supported by any political party in the country. Of all the all-India political parties, it is only the Hindu Mahasabha, which has advised the people of this country to work the Federal scheme. It has done so because the scheme preserves the political unity of India; but perhaps the more important reason for its support is that it is afraid that if the whole question is reopened it may lead to another Communal Award for the Federal Centre in order to satisfy the new Muslim demand for increased representation in the Federal Legislature. This can take place only at the cost of the Hindus, who have suffered greatly by the first Communal Award of late Mr. Ramsay Macdonald. Perhaps the Mahasabha hopes that although the Hindu majority has been reduced to a minority in the Federal Legislature, yet with the help of the representatives of the States, majority of whom are Hindu, the Hindus may still form majority in the House. Thus it is only as a lesser evil that it supports the Federal scheme of the Government of India Act.

Summary

Supported by
the Hindu
Mahasabha

A lesser evil

* Mr. M. A. Jinnah.

Opposed by
all other
political
parties

Opposition
of the Indian
National
Congress

No substitute
for *Swaraj*

No progress-
ive
Ministry will
be able
to function

Opposition
of the
Muslim
League

With this exception, all other important political organizations in the country have unanimously declared themselves against the scheme of the Act. The National Liberal Federation of India has condemned it on account of its reactionary and undemocratic nature. The Indian National Congress has rejected it because it is not a "Swadeshi" Constitution, having been forged in London by the combined efforts of the British imperialists and those who were not the elected representatives of the people of India. It is reactionary, ultra-conservative, undemocratic, and anti-national. It does not transfer any real power to the people of the country. The Central Responsibility is only an illusion. The Governor-General has arbitrary powers which he can use over the head of the Ministry. Moreover, the representatives of the States will be the nominees of the Princes, who are likely to support the forces of reaction rather than progress. In short, in the view of the Congress, this Constitution is no substitute for *Swaraj*. It has been suggested that the Congress is opposed to the scheme because it will not be able to command a majority in the Federal Legislature and therefore will not be able to form a Ministry. Although Sardar Patel, the strong man of the Congress Working Committee, once declared that the Congress would have a comfortable majority in the Federal Legislature, yet it is rather doubtful if it will be able to do so, things remaining as they are. But apart from this party question, it may be stated that it will be difficult for any progressive Ministry to function in the face of the combination of reactionary forces in the House. Thus from this point of view, the Constitution stands self-condemned.

Even the All-India Muslim League is opposed to the Federal scheme. It supported Provincial Autonomy but condemns the scheme of the Federation of India as outlined in the new Act. It was at the initiative of Mr. M. A. Jinnah, the President of the Muslim League, that the present Legislative Assembly passed a resolution condemning the Federal scheme. This opposition has been reiterated at the various sessions of the League and in a number of public utterances. In a statement issued from Bombay on December 20, 1938, Mr. Jinnah stated---

" This peach tree which has failed to produce any fruit and is withering in provinces, His Excellency now wants us to implant it on the sands of the Jumna at Delhi on the sole plea that the unity of India can only be secured throughout the sub-continent by this highly artificial and unnatural scheme.....In my opinion the British Government by forcing the scheme upon India will bring about more disastrous consequences to all concerned than even the ill-fated Versailles Treaty which created the new state of Czechoslovakia Republic by artificial methods which dragged in together wholly antagonistic and foreign elements and sections of people and races under a so-called system of democratic parliamentary government."

Mr. Jinnah's statement

This is a fairly emphatic denunciation of the Federal scheme by the mouth-piece of the Muslim League. The latter is opposed to Federation because

Does not go far enough

" it does not go far enough ; it does not confer upon India the Status of a Dominion, far less does it bestow upon India independence which is the professed goal of the Muslim League policy."

But like the Hindu Mahasabha, it views things more from the communal point of view than from the national point of view. Regarded from that angle, it thinks that the scheme proposes to set up at least a partially Responsible Government at the Federal Centre which will be dominated by the Hindu majority. It feels specially chary of this as it distrusts the Hindu majority. It is afraid that it will not be possible for the Governor-General to bring into action the safeguards for the protection of the Minorities against the opposition of the Federal Ministry as has happened in the Provinces. It also fears that the great powers of interference in the administration of the Provinces possessed by the Governor-General may, under pressure from his Federal Ministers, be used to whittle down Provincial Autonomy and to neutralize the advantages enjoyed by the Muslims in their majority Provinces.

Fear of Hindu domination

To guard against these dangers, a number of demands has been put forward by the Muslim politicians. Sir Sikandar has demanded in his new scheme that the Dominion Status must be immediately declared to be the constitutional goal of India. The Federal Ministry must contain a fixed number of Muslim members. The Muslim representation in the Federal Assembly should be further increased so as to be one-third of the total membership of the House and not only of the total membership from British India. Another demand is that because the Muslims will always be in minority in the Federal

More safeguards for the Muslims

Unfair or impractical

Legislature, a provision, stopping the passage of those measures which are opposed by a majority of two-thirds of the Muslim members of the Legislature, should be inserted in the Act. Again a demand is made for the transfer of whole of the Concurrent Legislative List to the control of the Provinces, and also that the residuary powers should be vested in the Provinces. Lastly it is demanded that the Muslim share in the Federal and the Provincial Services should be fixed by statute. It is not proposed to examine here the justness or otherwise of these demands. It must, however, be stated that most of these demands are old demands. They were considered by the framers of the Act and were rejected because they were either unfair or impracticable.

Hindus can not have a majority at the Centre

Congress cannot have absolute majority

A word, however, may be said about the Muslim fear of Hindu majority. It has already been pointed out that the Hindus have been reduced to the position of a minority in the Federal Legislature. In the Lower House, they have been assigned only about 28% seats. With this 28 per cent they cannot dominate the Centre. Moreover, they cannot form a single solid communal group because they will be divided among themselves, particularly between the Congress Hindus and the non-Congress Hindus. There is little likelihood of a permanent alliance between these two groups. Even if the non-Congress Hindus are able to claim the votes of some of the Hindu representatives from the States, they are not likely to command a majority. Coming to the Congress it may be stated that, as Sir A. H. Ghaznavi pointed out in a statement issued from Simla on June 28, it is not likely to command more than forty per cent seats in the Lower House. This is due to the fact that in that House 33.3 per cent seats will be filled by the Indian States. The Muslims will be allotted about 23 per cent. Out of the remaining 44 per cent, some seats are reserved for Europeans, Anglo-Indians, and other special interests. Thus only about 40 per cent seats are left for the Congress. It cannot capture all these seats ; but allowing that it will capture some seats belonging to other communities, the total cannot exceed 40 per cent. Of course the Congress is trying to secure some seats from the quota of the States, but it remains to be seen whether its efforts in this direction will succeed. Thus the fear of the Muslim

League regarding a strong and irremovable Congress Ministry is also not very real, at least as matters stand at present.

The Muslim League, in the last resort, shows preference to a Federation of British Indian Provinces alone over an all-India Federation of British Indian Provinces and the Indian States, because it will assure the speedier progress for British India. Perhaps it also believes that the Muslim interests will be safer in a Federation of the former kind because the Indian States, majority of which are Hindu, will be eliminated, thus reducing Hindu strength. In this belief, it seems to be mistaken. In a purely British Indian Federation, allowing for 33 per cent seats for the Muslims and some for other special interests, Europeans, Anglo-Indians, etc., the Hindus are left about sixty per cent seats, majority of which can be captured by the Congress.

Muslim League's preference for a Federation of British Indian Provinces

New Trend in Muslim Politics.—There is now a new trend in Muslim politics. It is clear that some of the Muslim politicians are disappointed in their hopes which they had pinned, perhaps wrongly to the Provincial Autonomy. They had hoped to capture and dominate four or five out of the total of eleven Provinces of India, and thus to offset Hindu influence in the remaining Provinces. But the Indian National Congress, with its national programme and appeal to the masses of all communities, besides capturing all the Hindu majority Provinces, was able to capture the North-West Frontier Province and Assam. Out of the remaining three Muslim Provinces, Sind has got a pro-Congress independent coalition Ministry under a Muslim Premier, who does not owe allegiance to the Muslim League or any other similar Muslim organization. The Punjab cannot be said to have a purely Muslim League Ministry, though most of the members of the dominant group in the ministerial party are also members of the Muslim League. The same may also be said about Bengal. Moreover even some of these Ministries are quaking before Congress onslaughts—the Bengal Ministry is carrying on only with the help of the European group. Thus those who desired to have purely Muslim Ministries are thoroughly disappointed. These people are joined readily enough by discontented Muslim politicians in the Congress majority Provinces, who are placed in a permanent minority on account of the

The disappointment of the Muslims

Discontented Muslim politicians in Congress majority Provinces

fixed reserved seats for communities. Moreover it is clear that the Congress Governments in the Provinces are not working as some of the Muslim politicians would like them to work, on account of fundamental differences in outlook which are being accentuated by the policy of non-cooperation and aloofness from the Congress adopted by some of the Muslims. This has further added to the Muslim discontent.

Causes of the disappointment

It is rather unfortunate that no attempt is being made either by the Muslims themselves or by others to understand the root cause of this disappointment and discontent. Apparently this is ascribed to the failure of the safeguards for the Minorities provided in the Constitution. The Governors are blamed for not showing enough courage by using their Special Powers in the way in which the communal minorities in opposition want them to do. It is rather amusing to find that this complaint is not peculiar to the Congress majority Provinces but is also made by the Hindu minorities in the Muslim majority Provinces. The question, therefore, does not concern merely the Muslims but also the Hindus, though it is more important for the former because being a minority from the all-India point of view, they are in minority in more Provinces than the Hindus. Clearly the question is of first rate national importance and deserves careful examination.

Discontent of the Minorities

Is this discontent only due to the failure of the safeguards? It cannot be denied that the safeguards have failed, but could they be successful, or should they be successful? It should be realized that these safeguards cannot function successfully. No Governor can afford to create a crisis after a crisis by bringing his Special Powers into play against the decisions of his Ministry, whether Hindu or Muslim, commanding a majority in the Legislature. If he were to do it, the whole constitutional machinery will come to a standstill. Moreover by doing it, the Governor will become unpopular with the party or community supporting the Ministry, which in certain Provinces will be Muslim while in others will be Hindu. Thus in different Provinces, different communities will decry the safeguards. This shows that these safeguards cannot be an adequate and uniform remedy for the trouble. Under the circumstances, safeguards were bound to fail as they have done.

But should the minorities—Muslim and Hindu, seek the protection of these safeguards and the

Could the Minority safeguards be successful?

Special Powers of the Governors? It is admitted by all that these Special Powers are an encroachment on the authority and powers of the Responsible Ministers and stand in the way of the complete transfer of power to the representatives of the people. If it is so, why should they be supported, even if they assure some immediate gain. A community which is in minority in one Province will welcome the exercise of these Special Powers, in that Province, but the members of the same community in another Province where it is in majority will condemn it.

Should they
be successful?

This is true both in the case of the Hindus as well as the Muslims. The attitude of both is inconsistent, contradictory, and harmful to them from the all India point of view. Moreover, is it not galling to the self-respect of the communities concerned to go to an agent of the third party for protection from the tyranny of each other?

If this is realized, the failure of Minority safeguards will no longer be regarded as the real cause of the discontent of the Minorities. The real cause will be found to be mutual distrust between the communities and the desire to dominate the other. An earnest attempt should be made to remove this distrust and to establish mutual confidence and trust. Instead of cherishing a desire for dominating the other, the communities must learn to respect each other's rights. This can only be done if the communities are made to feel that they are equally important limbs of the Indian nation, and must not look upon themselves as Hindus and Muslims in the political field. Only the rise of inter-communal political parties, with political and economic programmes, and cutting across the barriers of castes, creeds, and communities, can solve the problem permanently. No amount of safeguards will ever do it.

The real
cause of
discontent

A permanent
solution

Making Federation Safe for the Muslims.—This, however, is not realized by some prominent leaders of Muslim opinion in the country. Instead of realizing the futility of these safeguards, they demand further safeguards to make Federation safe for the Muslims. By this perhaps they mean the domination of the Federal Centre, making it impossible for the Hindus, whether under the communal leadership of Hindu Mahasabha or under the national leadership of the Congress, to take any step against

their wishes, even though it may be necessary for national growth. Some of them are thinking of altogether different methods of safeguarding Muslim interests in India by dividing India virtually in Hindu India and Muslim India, kept together in a loose union. They have begun to attack the very basis of the Federal scheme as adumbrated in the Government of India Act, 1935, and have brought forward a number of alternative schemes aiming at a Confederation rather than a Federation of India.

New Schemes

The Muslim Alternative Schemes.—The first in point of time is the *Pakistan scheme*. Although it was brought to public view by the poet-politician of India—the late Sir Muhammad Iqbal, as President of the All-India Muslim Conference at Allahabad, yet it is believed to have originated with one Mr. Rahmat Ali. It strikes at the very roots of 'one Indian nationhood' idea, and is based on the notion that the Muslims and the Hindus are two separate nations with different religions, cultures, civilizations, histories, traditions, literatures, economic systems, and social laws. It proposes to divide India into a Muslim India—the Pakistan, and Hindu India—the Hindustan. The Pakistan is to consist of the Punjab, the North-West Frontier Province, also called the Afghan Province, Kashmir, Sind, and Baluchistan—all predominantly Muslim Provinces. The word 'Pakistan' is derived by combining the first letters of the words, Punjab, Afghan Province and Kashmir, second letter of Sind, and the last four letters of Baluchistan. The Muslims in this territory, who are 30 millions or so out of its population of 42 millions, will consider themselves 'Pakistanis' and not 'Hindustanis.' The framers of the scheme argued that the Pakistan would serve as a 'national citadel' for the Muslims of India providing a 'moral anchor' and political shield and bulwark for the 45 millions Muslims living in Hindustan proper. The 'Pakistanis' would be willing to help the latter to secure political justice, whenever necessary. Ordinarily, however, they will be content to live peacefully in this area, perhaps uniting for common purposes with Hindustanis, if necessary, though they would never consent to the usurpation of Pakistan.

Origin of the Scheme

Division of India

Pakistan

Union with Hindustan

Merits of the Scheme

The scheme has one merit that it satisfies the Muslim ambition to rule themselves and not to be dominated by the Hindus, who are in majority in

Hindustan. It is also clear that Pakistan is a contiguous geographical area, which can be united in a single compact area for the purposes of political union. Some Muslim separatists go further and claim that it is separated from Hindustan proper by the Jumna and is not a part of India. Here the Muslims are in an overwhelming majority and claim to possess all the essentials of a nation. These things go in favour of the scheme, but much can be said against it. The scheme aims at dividing India into two nationalities, who, if they are once disunited are likely to take to different roads and shall not come together. It strikes at the fundamental unity of India, which has been asserting itself under the conditions provided by the *Pax Britannia* in this country. The two nations, with the conflicts of the past still fresh in their minds, are likely to be permanently at war with each other which will stand in the way of the progress of both the units. This point should be considered not from the point of view of the present but from the point of view of the future. It is futile to quarrel over the question whether the Hindus and the Muslims form one nation at present, but the question of questions is whether it is desirable to evolve in future one Indian nation, comprising both the elements. This nation is bound to be a strong one and would be able to safeguard its existence in face of all dangers in this world, dominated by ideas of power-politics. Some Muslim separatists perhaps aim at having two nations—the Pakistanis and the Hindustanis. They forget that both of them will be weak and will find it difficult to safeguard their existence against foreign dangers. From the economic point of view, as well, it will be better to be united and friendly than disunited and unfriendly.

It is also suspected that this scheme draws its inspiration from the "Pan-Islamic Movement," which aims at uniting into a Muslim Federation all the Muslim States from the coast of Western Asia to the Punjab. Whether Pan Islamism is practical politics or whether it will succeed in view of the rise of nationalistic feelings in Muslim countries, the racial diversities, conflicts of economic interests and traditional and historic animosities, is not for us to discuss here. But it may be pointed out that the Hindu idea in reply to this is a sort of "Pan Hindu Movement," which aims at uniting Hindu India,

Criticism of the scheme

Strikes at the unity of India

Is it desirable to have two nations in India?

Inspired by the Pan Islamic Movement

Hindu reply

A political danger to world peace

Burma, China, Japan, and possibly including Indo-China and Siam. Both the ideas are impractical and visionary, but they do a lot of harm to the idea of united Indian nationhood. If realized, they would bring two great religions of the world—Islam and Hinduism-cum-Buddhism, in a perpetual religious-cum-political conflict, and thus prove a potential danger to world peace.

Hindu point of view

From the Hindu point of view, the scheme is not acceptable as it leaves about twelve millions of Hindus at the mercy of the Pakistanis, converts the territory of the Hindu Maharaja of Kashmir into a Muslim territory, and leaves the gateways of India in the hands of those who may make common cause with the foreign invaders. Again the Sikhs, though a small minority in Pakistan, can never agree to be governed by the Muslims with their theocratic ideals of government and the Religion-Nation idea of the *Millet*. Even from the Muslim point of view, the scheme has been found to be defective. The scheme consults the interests of only thirty millions Muslims living in Pakistan and leaves the majority of Muslims, numbering forty-five millions scattered in different parts of Hindustan, at the mercy of the Hindustanis. Thus the scheme provides for only a minority of the total Muslim population and ignores the interests of the majority. It strikes at the solidarity of the Muslim race in India and, therefore, is not in the general interests of the Muslims. This has been realized by the Hindustani Muslims, who attack it on this ground.

The Raja Sahib of Mahmudabad declared in his presidential address at the first Delhi Provincial Muslim League Political Conference that the Pakistan scheme leaves out of account the fate of the Mussalmans scattered in the Provinces, where the Hindus happened to be in majority, and that it does not take note of Bengal, Hyderabad, Bhopal, and other Muslim States. Mr. Zahirul Hasan Lari, M.L.A., United Provinces, declared in his presidential address at the Pilibhit Muslim Political Conference that such a scheme while harmful to the Muslim interests in the Hindu majority Provinces, was fatal to the national strength of the country, making it the battle ground of two hostile communities. It betrayed a purely negative attitude and was no remedy for their ills. He is reported to have observed :

The Muslim point of view
Ignores the
Muslims living
in other
parts of
India

Raja Sahib
of Mahmud-
abad's
opinion

Mr. Z. H.
Lari's
criticism

"The Pakistan Scheme ignored the Muslims living in other parts of the country except those in the Punjab, N. W. F. P., Baluchistan and Sindh. On the other hand the main problem was that of the Muslims living in provinces where they formed a minority."

Even Dr. Sir Shafaat Ahmad Khan declared the scheme to be impracticable. This aspect of the criticism will be further appreciated when the strength of the wedge introduced into the ideas of Pan-Islamism and Pakistanism by the Frontier Gandhi, Khan Abdul Gaffar Khan, and his Red Shirts, with their ideas of Congress nationalism, is realized.

Sir Shafaat
Ahmad
Khan's
opinion

The Confederation of India: Dr. Abdul Latif's Scheme.—Realizing the imperfections of the Pakistan scheme, more schemes have been devised with the dual purpose of consolidating Muslim interests throughout the country and of avoiding the domination by the majority community. For this purpose these schemes aim at dividing India into cultural-cum-communal zones and regions and then unite them into a Confederation of India with a weak Centre and where the position of the Muslims is adequately protected by means of safeguards. One of such schemes has been put forward by Dr. Syed Abdul Latif of Hyderabad, Deccan, at the instance of the All-India Muslim League. The scheme ultimately aims at evolving in the country an independent Confederacy of culturally homogeneous free States. The reasons for formulating this alternative scheme as stated by the author are that India is not a composite nation and does not promise to be one as long as Hindus and Muslims continue to be divided into separate and different social-cum-cultural-cum-religious groups, that the majority government, which is sought to be established, will also be manned by the communal majority of the Hindus, on whose mercy the Muslims will always be, and that the Muslims will always be a helpless minority at the Centre and in most of the Provinces and the Indian States. This will have the effect of denying to the Muslims any opportunity for economic advance and cultural progress on Islamic lines, diminishing their historic importance in the country, ruling out the possibility of their acquiring equal status and position in the consels of the country, and of perpetuating the cultural-cum-communal clashes between the communities, which admittedly stand in the way of the attainment of

Cultural
cum-com-
munal Zones

Dr. Syed
Abdul
Latif's
Scheme

Confederacy
of culturally
homogeneous
Free States

Reasons for
formulating
the Scheme

independence by the country. Thus with the avowed object of removing obstacles in the way of India's independence, this new scheme of government is devised.

Division into Zones

The Zones.—In order to realize the ultimate aim of the establishment of a "Confederacy of culturally homogeneous States," it is thought essential to divide the country into Zones, comprising such cultural units or nationalities that can resolve themselves into culturally homogeneous States. It is suggested to have the following Muslim Zones:—

The Muslim Zones

Punjab, Kashmir, North-West Frontier Province, Baluchistan, Sind, Khairpur, and Bahawalpur. will be a new cultural and political homeland for the thirty million Muslims residing in this area. It is suggested that the Hindus and Sikhs living in this Zone should concentrate into the Hindu and Sikh States in this area. The Sikhs, however, are allowed to have their religious centre, Amritsar, as a free city. The Hindu Maharaja of Kashmir is to be compensated for the loss of his territory by handing over the British-owned Kangra Valley to him.

Bengal and Assam

(b) The North-East Block, comprising Bengal and Assam, will be a free State of thirty million Muslims living in that part of the country.

Delhi, U. P., Rampur, etc.

(c) The Delhi-Lucknow Block, comprising Delhi, the western part of the present United Provinces, and the Rampur State, will provide a home for twelve million Muslims of the United Provinces and Behar. This Block will be contiguous to the North-West Muslim Block, but will leave out, presumably under Hindu control, the Hindu religious centres of Muthra, Benares, Hardwar, and Allahabad.

Hyderabad and Berar, and Madras

(d) The Deccan Block, comprising the Dominions of Hyderabad and Berar, and a narrow strip of territory running down *via* Kurnool and Cuddapah to the city of Madras, will serve as a compact area for the Muslims living scattered below the Vindhya and the Satpuras. This territory is required for having access to the sea for the Muslim mercantile community living on the Coromandal and Malabar coasts. It is also pointed out that some Muslims prefer to have an opening to the Western Coast *via* Bijapur.

(e) *The Muslim States and Ajmer.*—The Muslims, living outside the above-mentioned Zones in Rajputana, Gujerat, Malwa, Western India States, may concentrate in the Muslim Indian States in those areas and Ajmer, which will be a free city.

The Hindu Zones.—The remaining part of India will be at the disposal of the Hindus, who can partition it into Zones on linguistic basis, or otherwise. The Hindu and Muslim population, living in the Zones allotted to the other community should migrate to the Zones allotted to their own community.

Other Minorities.—It is proposed that the present day Minorities, constituting the smaller nationalities of the future, comprising the Christians, Anglo-Indians, Parsis, and Buddhists may continue to live where they are at present. If, however, they so desire they should be allowed a *cantonal* life in the Zones allotted to the major communities. In the alternative they will be afforded religious or cultural safeguards which they may need to preserve their individuality. The Depressed Classes or the *Harijans*, who are scattered all over the country and do not possess any separate common culture, are to be given the liberty to choose as their permanent homeland either the Hindu or the Muslim Zones as they please.

Transitional Period.—It is realized that this scheme cannot come into force immediately. It is proposed that the 1941 census should provide the preliminary data which should be considered by a Royal Commission with the idea of giving final shape to the scheme. Thus there would be a transitional period during which an *ad interim* Constitution shall have to be devised. This Constitution, "while assuring political unity for the whole country, will allow no single nationality to obtain the upper hand over the other, and yet afford them all every moral urge to work together for the evolution of the needed homogeneous free states." It may even take the form of a Federation, if the powers of the Centre are reduced to a bare minimum. This Federation should consist of units, which can later resolve themselves into cultural Zones, though this may necessitate the creation of some new Provinces on cultural or linguistic lines. One of such Provinces must be carved out of the present United Provinces with Lucknow as its centre, and should always have a Muslim Prime Minister so as to make it eventually a Muslim Zone. During this period the

On linguistic basis

Cantonal life for other Minorities

The Depressed Class

Consideration by the Royal Commission

Constitution for the transitional period

May be a Federation

A new Muslim Province

Regional Boards

Regional or Zonal Boards may be created to deal with subjects of cultural and economic importance common to contiguous units in the Federation. These Boards must have adequate Muslim representation.

Nature of the Executive

Safeguards for the Muslims.—A number of safeguards is considered necessary for the Muslims during the period. The system of separate electorates for Muslims with the existing proportions allotted to them in the different Legislatures must continue. All subjects touching Muslim religion, personal law, and culture must be exclusively dealt with by the Muslim members of the Legislature, who would be helped by Muslim theologians from outside. The executive Government, made up of the Ministers, should not be formed by the majority party alone, which is likely to be the Hindu party, but should be a "composite cabinet," comprising Hindus and Muslims with a common policy. It should not be a "Parliamentary executive" but a "stable executive," independent of the Legislature and not liable to be turned out by it. The Prime Minister should be elected by the members of the Legislature. He should hold the office during the term of the Legislature, irrespective of any subsequent vote of the Legislature. He should form his own Cabinet from all groups but with an equitable number of Muslims enjoying the confidence of the Muslim members of the Legislature, who would suggest a panel for the purpose.

**Appoint-
ment of an
Assistant
Minister**

In the case of the portfolios of Law and Education, there should be an Assistant Minister in addition to the Minister in charge. One of them must be Muslim so that Muslim interests may be safeguarded and a steady influence applied on the policy of the Government. A Muslim Board of Education and Economic uplift should be established in every Province to look after the cultural side of the education of the Muslims and their economic uplift. The Muslims may be allowed to tax themselves for any special purpose, if they so chose. On the judicial side, the personal law of the Muslims should be administered by the Muslim Judges.

**The Muslim
Board of
Education
and
Economic
uplift**

Merits of the Scheme.—This is the scheme that was placed before the All-India Muslim League. It is calculated to satisfy the Muslims as safeguards of their own choice are provided in it. Unlike the Pakistan scheme, it does not ignore the interests of

the Muslims in other parts of the country, but allot three Zones to them with access to the sea in the south-west. From this point of view, therefore, it is a vast improvement on the Pakistan scheme. The safeguards suggested protect adequately the cultural, economic, and political interests of the Muslims. The Legislature, the Executive, and the Public Service Commissions are to be constituted according to their wishes. The Executive is not to be a "Responsible Parliamentary Executive" but a "composite one," containing the representatives of Muslims and virtually chosen by them. Above all, it provides for the administration of Muslim personal law by the Muslim Judges. Thus the Muslims are allowed extra-territorial rights and form a state within a state.

Criticism.—The scheme aims at establishing a confederacy of free and autonomous communities in India rather than a united Federation of India. It shall have the effect of converting India into a congeries of virtually free States. They are aligned on communal lines and, therefore, are likely to follow conflicting policies. The segregation of the communities in separate Zones rules out the possibility of their coming nearer and understanding their respective points of view. The hatred, suspicion, and distrust, which characterized the relations of the communities in the past and which has a chance of subsiding by the needs of good neighbours, would flare forth like a dangerous blaze. These differences are bound to spread from the religious to the economic and political fields, which would further strengthen the forces of separatism. Thus this scheme strikes at the very roots of the fundamental unity of India, which it professes to assure. India is bound to be divided into Hindu States and Muslim States, ready to take the field at the slightest provocation.

It is clear that the scheme does not accept the 'one-nation' idea for India, either as a present day reality or as a future goal. In the opinion of the framers of the scheme, India is not and does not promise to be a composite-nation as long as Hindus and Muslims continue to be divided into different social orders and possess different cultures. Some people seriously dispute the point that the Hindus and the Muslims of India possess different

Interests of the Muslims in other parts of the country are protected

Comprehensive safe-guards

A composite-cabinet

Extra-territorial rights

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Wrong assumption

Wrong in basis and wrong in conception

Undoing the work of centuries

It ignores the wishes and interests of British Imperialism, Indian States and the Hindus

cultures. Only a few Muslims in India can claim foreign descent, and even those, who can do so, have now been in this country for centuries. During this period they have got mixed up with the Muslims of Indian descent, who inherit Indian cultural traditions. The contact of their age-long neighbours has also influenced them. Thus a common Indian culture, which is a synthesis of Hindu and Muslim influences, has been coming into being during the last few centuries. The process, perhaps, is not yet complete, but there is no gainsaying the fact that it is going on. If it is not stopped, it is bound to succeed in creating a synthetic, homogeneous culture for the whole of India. Thus so far as the future is concerned, the scheme starts on the wrong assumption. As far as the present is concerned in the words of the *Statesman*, "There exists to-day an essential unity of Indian life from Peshawar to Camorin, and a growing sense of nationality of which the scheme takes far too little account." Whether one may agree with this view or not, the question may be asked if it is desirable to encourage the formation of one nation in India. If the answer is in the affirmative, the scheme must be pronounced as wrong in basis and wrong in conception. If, however, it is desired not to have one united nation in India, the scheme may be defended as it is sure to achieve that end. In that case it will undo the work of centuries of Hindu reformers, Muslim sufis, and of other political and social reformers of both communities. It will also certainly undo the work of British imperialism, which has always claimed that it has given political unity to India. But perhaps it is itself, at least partially, responsible for this trend in Indian politics, and it must suffer when it is going to recoil on itself.

The scheme is wholly and solely designed to protect and even augment Muslim communal interests. It completely ignores the wishes and interests of other parties in India—the British imperialism, Indian States, and the Hindus. It is suspected by some that such schemes are inspired by some British imperialistic politicians. It is very difficult to say how far this is true. But if it is so, the purpose behind the move must be the securing of some tactical advantage against the Congress, dominated, as it is, by the ideas of democratic nationalism and stampeding it

and other Hindus into accepting the scheme of Federation offered by the British Parliament. It is highly improbable that British statesmen would support a scheme which threatens to undo the achievements of British imperialism in India and might prove a danger to its economic and political interests. The Indian States have not yet spoken. It is not known whether they have been consulted. It is very doubtful whether they would care to join the Zones, which are to be created under the Act. Evidently it is believed that the religious sentiments of the Indian Princes and their subjects are sufficiently strong to bring them in alliance with their coreligionists of British India without caring for other considerations, political and economic. No account is taken of the fact that the Indian Princes, both Hindu and Muslim, are very much afraid of democratic ideas, which must prevail within the zones, whether they are Hindu or Muslim.

The third party, the Hindus, who form an overwhelming majority in India, has not been consulted. Their interests have not merely been ignored but sacrificed. It is strange that the majority community should not be allowed to have any say in the drafting of the Constitution of a country, which exclusively claims their patriotism. On its merits, the scheme is clearly unfair to the Hindus. In the first instance, the scheme is devised on the principle that if there is a Hindu Prince ruling a territory with Muslim majority, he should relinquish it to be transferred to Muslim control; if, on the other hand, there is a Muslim Prince ruling a Hindu territory, the Hindus should migrate from the place so as to convert it into a purely Muslim territory. The reference, of course, is to the cases of Kashmir and Hyderabad. If Kashmir is to be converted into a Muslim territory, applying the same principles, it is only just that Hyderabad should be converted into a Hindu territory. The Maharaja of Kashmir and His Exalted Highness, the Nizam, can change places. Again the territory assigned to the Muslim Zones is larger than is warranted by the numerical strength of the Muslims, who are only eighty millions as compared with 250 million Hindus. This territory also contains the most fertile valleys of the Indus and the Ganges, the economically developed Province of Bengal, the prosperous State of Hyderabad, and the strategically important territory on the north-west

Hindu
interests
sacrificed

Unfair to the
Hindus

Kashmir

Territory
assigned to
the Muslim
Zones

Economic considerations ignored

and north-east. Any division of territory must take into consideration economic needs in addition to cultural considerations. If a community is to exist, it must be able to feed itself. This thing is altogether ignored by the framer of the scheme.

The North-Western Zone

Coming to the Zones, it is clear that the framer has acted on the principle "heads I win, tails you lose." He does not care if his distribution is just or equitable provided it serves his purpose of consolidating and strengthening Muslim position in different parts of the country. The North-Western Zone in much more extensive than it should be. The Ambala Division is almost exclusively Hindu, and should not be included in this Muslim Zone. The Jullundhur and Lahore Divisions as well, are not overwhelmingly Muslim. The small nationality of the Sikhs lives to a large extent in this area. Why should not the Sikhs be assigned a separate homeland here? The Muslim population, of course, can move to Western Punjab or in the Multan Division, which area is overwhelmingly Muslim. The North-Eastern Block, consisting of Assam and Eastern Bengal, is to extend right up to the great city of Calcutta. The Hindu population of Eastern Bengal is to move to Western Bengal and Muslim population of Western Bengal is to move to Eastern Bengal. It is known that Eastern Bengal contains a large Muslim population, but in Assam only one district, viz., Sylhet, contains a large Muslim population. Then why the other part of Assam with its overwhelmingly non-Muslim population is proposed to be included in this Muslim Block is not clear.

The inclusion of Assam

The Delhi-Lucknow Block is proposed to be created for 12 millions of Muslims of Bihar and the United Provinces, while 18 millions of Hindus are to be asked to clear out from this area. Why should not the smaller number of Muslims be asked to move out of this centre of Hindu culture and accommodate themselves in the neighbouring Muslim Blocks cannot be easily understood. Further there is absolutely no justification for the Deccan Muslim Block in view of the fact that the population is overwhelmingly Hindu. Even from the Muslim point of view the formation of this Block is not safe as in the midst of its Hindu surroundings it will be cut off from other Muslim Blocks in the north. Lastly, the Hindu population of the Central Indian Muslim States like Bhopal, Tonk, Junagarh, etc.,

Delhi-Lucknow Muslim Block

Greater number of Hindus are asked to move out

No justification for the Deccan Muslim Block

Central Indian Muslim States

is called upon to move out so as to make them pure Muslim territories. Thus the Muslim States must be protected and safeguarded even at the cost of the Hindu economic and financial interests. Thus it is clear that the formation of these Zones is only a one-sided arrangement, being manifestly unfair to the majority community. Any scheme, which hopes to be accepted by all concerned, must be a compromise involving sacrifices on the part of all the parties. Why should sacrifices be made by one party alone, specially when there is no corresponding gain ?

Although there is no denying that the division of India into existing Provinces is defective, as it is not based on any principle, being largely the result of historical circumstances, yet if once the division of India is begun into cultural-cum-linguistic-cum-communal Zones, there will be no end to it. India shall have to be divided into an inconveniently large number of units—big and small. The wisdom of this step is certainly doubtful, specially in view of the danger that some of them, at least, may not be able to exist separately from the financial point of view. If the principles, which form the basis of this scheme, are allowed unrestricted application, the smaller nationalities may not be satisfied by merely cantonal life as in that case, at least from the military point of view, they will be at the mercy of the bigger nationality under whose auspices they may be living. They may also ask for separate homelands. The claims, in this respect of the Sikhs of the Central Punjab, who can easily form a separate homeland in conjunction with the Cis-Sutlej States, cannot be easily brushed aside. The Parsis may also ask for a separate homeland in and round Bombay. The Indian Christians may put forward their claim for having a small Province somewhere near Madras or even in northern India. Will this be conducive to India's interests ? Or will it be practicable ? Will such small divisions be able to maintain decent standards of administration and finance beneficent schemes in their respective areas ?

Again the *Harjans*, who are coming more and more under the influence of separatist tendencies, may ask for a big slice of land, where they will not suffer from any disability, whatsoever, as the presence of a caste-Hindu will not be tolerated there. But the scheme allows the *Harjans* to continue to remain

Division of
India into
cultural-
cum-
linguistic-
cum-
communal
Zones

Homelands
for other
Minorities

The Sikhs

The Parsis

The Indian
Christians

Is this
conducive to
India's
interests ?

The
Harjans

where they are, because in Hindu Zones their presence might weaken the solidarity of the Hindus while in the Muslim Zones they will provide a fruitful ground for conversion. The scheme is based on the migration of population from one Zone to the other, which is very difficult, though not wholly impracticable.

**Safeguards
for the
Muslims**

The sheet-anchor of the scheme is the number of safeguards for Muslims. It is expected that the Indians will never forget their communal majority parties to run the administration. The Hindus will always form the majority and the Muslims the minority. Therefore party government and majority rule will always mean Hindu domination which will be detrimental to Muslim interests. So "Responsible Government" of the accepted type must not be allowed to grow. Instead there should be an irremovable and irresponsible Executive. It is very doubtful if the democratic instincts of the politically conscious Indians—both Hindus and Muslims, would accept this.

**Irremovable
and
irresponsible
Executive**

Again the Federal Cabinet must always contain a definite number of Muslims, selected in the prescribed way by the Muslim members. This virtually places the formation of the Cabinet in the hands of the Muslim members. Under the circumstances it will be very difficult for any non-Muslim to form the Cabinet. The Muslim members can simply refuse to select their representatives and thus bring the machinery to a halt. The provision in respect of legislation on the subjects touching Muslim culture to be the exclusive concern of the Muslim members who can seek the help of Muslim divines, and the provision in respect of the administration of Muslim personal law by Muslim Judges alone are simply unworkable in any State where there is a large number of non-Muslims. The question may be asked if such safeguards will also be allowed to other communities. There is no valid reason for refusing such privileges to them, if they are to be allowed to the Muslims. If this is right, how can the administrative machine function? It is clear that the whole scheme is impracticable, visionary, and fantastic. It does not provide for any political advance, whatsoever. Even Dr. Sir Shafaat Ahmad Khan, a prominent Round Tabler and Muslim Leaguer, has openly opined that "it is confused, illogical and romantic, and is moonshine." He expressed the hope that the Muslim League would not be caught in the meshes of wild cat schemes, and

**Legislation
on cultural
subjects**

**Administration
of
personal law**

**Will such
safeguards
be allowed to
other com-
munities ?**

**The Scheme
is wholly im-
practicable**

**Sir Shafaat
Ahmad
Khan's
opinion**

would unhesitatingly reject such half-baked and crude projects.*

Mr. Asadullah's Amended Schemes.—Mr. Asadullah of Calcutta suggested an amendment of Dr. Latif's scheme in one respect. He proposed that instead of the Deccan Block of Dr. Latif's scheme, the Province of Bihar and Orissa should be incorporated into a Muslim block. The Deccan Block is likely to be the weakest of the Muslim blocks, being isolated from the rest of the Muslim Zones. It will be a bit difficult for the Muslims of the other Zones to keep in contact with the Muslims of the Deccan Block or to extend their protecting arm to them, if things come to that pass. Mr. Asadullah's proposal avoids this danger and possesses the additional advantage of forming a range of Muslim Blocks from the north-west to the north-east of India. It eliminates the barrier of a Hindu Block in the United Provinces and Bihar, and thus establishes geographical contiguity of the Muslim Blocks. From the Muslim point of view, this scheme certainly possesses an advantage from the point of view of defence. It will give the whole of Northern India—the best part of the country—to the control of the Muslims, leaving Central and Southern India to the Hindus. As far as Hyderabad is concerned, Mr. Asadullah proposes an exchange of territory between the Nizam and the Maharaja of Kashmir. As for the Muslim population scattered in the Deccan, including that of Hyderabad, he suggests that it should move to the newly created Muslim Block of the United Provinces and Bihar because if the people are to move, "it is all the same whether they are made to move 100 or 500 miles."

This scheme is open to all the criticism to which Dr. Latif's scheme has been subjected. It is all the more unjust to the Hindus because it proposes to convert the Hindu Provinces of Bihar and Orissa into a Muslim Zone simply to give geographical contiguity to the Muslim territory. From the national point of view, the scheme is more dangerous than Dr. Latif's scheme because by eliminating a Hindu Zone from the range of Muslim Zones and a Muslim Zone from the range of Hindu Zones, it allows both the communities to consolidate their forces in separate areas, ruling out the possibility of mutual contact and co-operation.

The New
Muslim
Block of
Bihar and
Orissa

Geographi-
cal contiguity
of the
Muslim
Blocks

Exchange of
Kashmir and
Hyderabad

Criticism

Unjust to the
Hindu

More danger-
ous from the
national
point of view

* Statement issued from Simla, July 10th, 1939.

Panacea for all economic, political, and communal ills

Federal type of Government is desirable

Principle of the Scheme

Acceptance of Dominion Status

What the scheme endeavours to achieve

An attempt to meet criticism of the States and the Muslim Minority

Sir Sikandar Hayat Khan's Scheme for the Federation of India.—Sir Sikandar Hayat Khan, the Hon'ble Premier of the Punjab, has put forward his own scheme for the Federation of India as an alternative for the scheme of the Government of India Act, 1935. He thinks that this will provide a panacea for all economic, political and communal ills of the country. He takes

"cognizance of the fact that the federal proposals embodied in the Government of India Act are unacceptable to a vast majority of the people in this country. At the same time, it is admitted by all concerned, and even those who are opposed to the present scheme, that a Federation of some kind is not only desirable but indispensable for the ordered and peaceful progress of the country as a whole."

Thus he sets about to formulate a scheme of Federation rather than a Confederation or a unitary type of government. The principles on which he endeavours to base the scheme are that the authority of the Centre should be rigidly and specifically circumscribed to matters of all-India concern so as to protect adequately the internal administration of the Indian States and the Provinces from interference from the Centre, and that the religious, political, cultural, and economic interests of the Minorities should be adequately safeguarded. Sir Sikandar suggests that the only practicable course open to India is to accept Dominion Status. Great Britain should make a declaration to this effect immediately, because "granting of constitutional reforms in dribbles can no longer satisfy the aspirations of present-day India."

The scheme provides for the entry in the Federation of the Indian States and the Provinces on a regional basis, encourages collaboration between contiguous units, brought together in Zones, in respect of matters of common concern, reduces causes of friction between British India and Indian States, by cutting down the jurisdiction of the Federal Executive and the Legislature enables the Indian States and the Provinces to enter the Federation on a uniform basis, discourages the growth of fissiparous tendency among the units by ensuring willing and loyal co-operation from the units, safeguards the integrity and autonomy of the units, and lastly gives the Minorities a greater sense of security. All this has been done in order to meet criticism against the official scheme from all quarters,

specially by the Indian States and the Minority community.

Division into Zones.—Sir Sikandar proposes to divide India tentatively into the following seven Zones with the idea of establishing the Federation of India on regional basis :

Composition

Zone 1.—Assam, Bengal, excluding one or two western districts, Bengal States, and Sikkim.

Zone 2.—Bihar, Orissa, and the area transferred from Bengal.

Zone 3—United Provinces and U.P. States.

Zone 4.—Madras, Travancore, Madras States and Coorg.

Zone 5.—Bombay, Hyderabad, Western India States, Bombay States, Mysore, and C.P. States.

Zone 6.—Rajputana States excluding Bikaner and Jaisalmer, Gwalior, Central India States, Bihar and Orissa States, and Central Provinces and Berar.

Zone 7.—Punjab, Sind, North-Western Frontier Province, Kashmir, Punjab States, Baluchistan, Bikaner, and Jaisalmer.

The Regional Legislatures.—Each of these "Zones" is to have a Regional Legislature, consisting of the representatives of units, each one of which will be entitled to send the same number as is allotted to it in the Federal Assembly under the provisions of the Government of India Act, 1935. The British Indian representatives to these Legislatures shall be chosen in accordance with the procedure laid down in the Government of India Act, 1935, for the election of representatives to the Federal Assembly. A long range procedure is laid down in respect of the representatives of the Indian States as under :—

Method of
Election

(a) during the first ten years, three-fourths to be nominated by the Ruler and one-fourth to be selected by the Ruler out of the panel to be elected by the State Assembly or a similar body ;

(b) during the next five years, two-thirds to be nominated by the Ruler and one-third to be elected ;

(c) after fifteen years one half to be elected and one half to be nominated ;

(d) after twenty years, one-third to be nominated and two-thirds to be elected.

The Indian
States

If, however, the number of representatives allotted to a State is two or less than two, the Ruler shall nominate them for the first fifteen years. Afterwards they shall be elected in the way described above.

**The Power
of the
Regional
Legislatures**

The Regional Legislatures shall have the power to deal only with subjects which are included in the Regional List. No measure relating to a Regional subject shall be considered to have been passed unless passed by a two-thirds majority. At the request of the units it may legislate with regard to Provincial subjects. Such laws, however, require confirmation by the Government of the units concerned before they can come into force. They shall be repeated, if at least half the number of the units in a Zone ask for it.

**Representa-
tion for
interests
represented
by the Coun-
cil of State**

The Federal Legislature.—The Federal Legislature shall be unicameral and not bicameral as is provided in the Government of India Act, 1935. But if it is considered necessary to give representation to the special interests, which have been given representation in the Council of State under the official scheme, the number of seats in the Federal Assembly may be increased to the extent of ninety-eight, divided equally among the seven Zones. Out of them sixty should be reserved for British India and thirty-eight for Indian States. This distribution, however, is not to disturb the representation of the Muslims and other Minorities in the country.

**The Consti-
tution of the
Federal
Assembly**

The Federal Assembly shall consist of 375 members, 250 belonging to British India and 125 belonging to the Indian States. The Muslim representation shall constitute one-third of the total strength of the Assembly. Other Minorities will have their shares according to the provisions of the Government of India Act, 1935. Indirect election to the Assembly will continue as the Federal Assembly shall be formed by all the representatives of the Regional Legislatures. The competence of the Assembly will extend over a carefully curtailed List of Federal subjects, such as Defence, External Affairs, Communications, Customs, Coinage and Currency. Other subjects included in the official Federal List are to be transferred to the units or Zones. Residuary powers regarding subjects not mentioned in the Federal List are to vest in the units, and in case of Zonal subjects, to vest in the Regional Legislatures. The Concurrent List in the Act shall be revised and curtailed. In the event of any doubt regarding the nature of a subject, the decision of the Viceroy will be final.

Powers

**Residuary
Powers**

The Federal Legislature can also legislate in respect of subjects on the Concurrent List, if at least four Zones ask for it, but such legislation will apply only to those Zones. It can also be authorised by the Regional Legislatures to legislate with regard to Regional and Provincial subjects. If this authorization is to have any force, it must be backed by at least four Zones. Unless it is endorsed by all the seven Zones, such measures can apply only to those Zones which ask for it. Such laws shall be repealed, if at least three Zones demand it.

Powers of legislation regarding subjects on the Concurrent List

The Federal Executive.—The Federal Executive shall consist of His Majesty, represented by the Viceroy and Governor-General, and a Council of Ministers. The Council of Ministers is to consist of not less than seven and not more than eleven Ministers in number, including the Prime Minister. The last-mentioned will be appointed by the Governor-General from among the members of the Federal Legislature. Other Ministers will also be appointed from among the members of the Federal Legislature, but in consultation with the Prime Minister. Some specified rules shall be observed in the formation of the Cabinet. It must include at least one representative from each Zone; one-third of the members must be Muslims; and two Ministers if the total strength of the Cabinet is nine, or less than nine, and three Ministers if the total strength of the Cabinet is more than nine, must be chosen from among the representatives of the Indian States. There is, however, no objection to over-lapping between the representatives of the Muslim community and the States, provided their respective strength in the Cabinet is not reduced. Attempt should also be made to provide for adequate representation to other important Minorities. During the first twenty or fifteen years, two of the Ministers in charge of Defence and External Affairs may be nominated by the Governor-General from among the members of the Federal Legislature or from outside. The Ministers will hold office during the pleasure of the Governor-General.

Composition

Representation for the Muslims and the States

Ministers for Defence and External Affairs

The Ministers will normally remain in office for five years, which will be the normal term of the Federal Legislature. A Minister shall be removed, if he loses the confidence of the majority of the representatives of the Regional Legislature, which

Functioning

he represents. The whole Ministry, except the Ministers nominated by the Governor-General, shall resign, if a vote of no-confidence is carried against it in the Federal Legislature.

Advisory Committees for Defence and External Affairs.--Provision is made for the appointment of Advisory Committees for Defence and External Affairs. The former Committee shall consist of the Governor-General as President, the Ministers for Defence and External Affairs, the Prime Minister, the Finance and the Communication Ministers, the Commander-in Chief, the Chief of the General Staff, a Senior Naval Officer, a Senior Air Force Officer, seven Regional representatives, five official experts to be nominated by the President, the Secretary to the Defence Department, and two non-officials to be nominated by H. E. the Viceroy. The latter Committee shall be constituted by H. E. the Viceroy as President, Federal Prime Minister, the Minister for External Affairs, seven Regional representatives to be selected by the President from among the members of the Regional Legislatures, two officials and two non-officials to be nominated by the Viceroy, and the Secretary for External Affairs. These Committees must include at least three members from the Indian States. If the number is less, the difference must be made up by the appointment by the President of additional members selected from a panel proposed by the Chamber of Princes.

The Advisory Committee for Defence

The Advisory Committee for External Affairs

Zonal Representation

Minorities, States' rights, racial discrimination, safety of India, and subversive activities

The Federal Railway Authority.--It is provided that the Federal Railway Authority must include at least one representative from each of the seven Zones.

Safeguards.--The revised Constitution of India must include effective and adequate safeguards for the protection of the rights of the Minorities, the prevention of racial discrimination against British born subjects, against violation of treaty rights of the Indian States, against interference by the Federal or Regional governmental bodies in the sphere allotted to the Indian States and the Provinces, ensuring the safety of India against foreign aggression and peace and tranquillity in the country, prevention of subversive activities by the citizen of a unit or a Zone against another unit or a Zone, and for the protection of culture and religious rights of the Minorities.

Composition of the Indian Army.—It is also proposed that the composition of the Indian Army, as it was on January 1, 1937, shall not be changed. If there is a change in the peace-time strength, the communal proportions in the Army as on January 1, 1937, shall not be disturbed. Of course this condition may be relaxed in the case of a war or any other grave emergency.

Not to be altered

Criticism.—Sir Sikandar's scheme has not so far been seriously considered by the parties concerned—the Indian people, the Indian States and the British Government. It is, therefore, not possible to say what will be its ultimate fate. Meanwhile, some politicians and constitutionalists have spoken, and, generally speaking, they do not support it. Some harsh words have been spoken about it. It has been damned as "a constitutional outrage," and a novel, impracticable, quixotic, and reactionary scheme. On the other hand, the author himself claims that it is calculated to remove all the economic, political, and communal ills of India. This is a high sounding claim. If it is true, must give a welcome relief to all patriotic Indians.

Opinion about the Scheme

The Author's claim

But on the face of it, the scheme is open to grave objections from the various points of view. The author of the scheme proposes to remove all our ills by the simple method of trying to concede the demands of the malcontents. Himself belonging to the great minority community, the Muslim, and being a very prominent figure in the counsels of the All-India Muslim League, he may be presumed to be knowing the Muslim mind and the Muslim complaints and demands in respect of the official scheme of Federation. He has done his best to incorporate all such demands in his constitutional scheme so as to make it acceptable to his co-religionists. He has also promised that effective safeguards for other Minorities may also be incorporated in the scheme, thus trying to win them over. He has also tried to win over the Indian Princes by endeavouring to safeguard their autocracy for all times to come. Thus he tries to satisfy the Muslims and the Indian Princes. He, however, completely ignores the majority community, the Hindus, who have got their own objections to the official scheme from the communal point of view. The objections of the advanced political opinion in the country, as represented by the Indian National Congress and even

Conceding the demands of the malcontents

The Muslims

The Princes

The Hindus

The Congress

Advantageous to the Muslims

As a matter of fact, the study of the scheme gives the impression that the author is more interested in disarming the opposition of one community to the scheme of Federation by not merely reasonably safeguarding its position but assuring it a dominating voice, than solving the problem that faces India. This is certainly objectionable from the point of view of other communities. This does not mean that the position of the Muslims should not be adequately safeguarded in any scheme of Federation, but that the pendulum should not swing too far on the other side. It must remain in the middle so as to safeguard the interests of all.

Safeguards for the Muslims

Sir Sikandar proposes to remove the Muslim fear of Hindu domination at the Centre by incorporating a number of safeguards. The advantages, which the Muslims enjoy under the Communal Award of late Mr. Ramsay Macdonald, are kept intact. An attempt is made to give more by conceding the demand for 33% of the total membership of the Federal Legislature. It may be stated that the original Muslim demand, which has been conceded by the British Government was for 33% of British Indian representation. This Muslim demand for increased representation can obviously be at the cost of the Hindus, because the representation of all other communities and the states is to be kept intact. How far it is fair to concede 33 per cent. representation to a community which is about 23% of the total population, is a question which must be considered by all justice loving people. At the same time it should not be forgotten that the majority community, which is already under-represented, is asked to make further sacrifices so as to be reduced to the position of a helpless minority. But, if, in the interests

Muslim representation in the Legislature

of national unity, it becomes absolutely necessary to concede this demand of the Muslims, the proper way is not to reduce the representation of the Hindus from British India, but to have some sort of understanding with the Indian Princes so that as far as may be possible they should include Muslims among their representatives, whose number should approximately be proportionate to the Muslim population in their States. The Indian Princes, perhaps, will not be willing to limit their choice by a statutory provision or by any hard and fast rule, but a sort of convention or understanding should certainly be feasible.

In order to achieve this purpose further, Sir Sikandar proposes to have a weak Centre with very limited authority, to vest the residuary powers in the units and the Regional Legislatures, to have a statutory provision for the inclusion of a definite number of Muslim Ministers in the Federal Cabinet, to divide India into Zones so as to neutralize the Hindu majority and to continue the Muslim majority in the army. But, above all, he visualizes a subtle alliance between the Muslims, and other reactionary elements, and the States in the Federal and the Regional Legislatures so as to reduce the natural Hindu majority to a minority. Besides achieving this end, this alliance is bound to strengthen the forces of reaction, conservatism autocracy, and mediaevalism, which will prejudice the cause of India's progress.

Weak
Centre

To bring about this alliance, the Indian Princes are offered a tempting bait. Their treaty and other contractual rights with the Crown are safeguarded. Presumably they are to be interpreted as the Princes want them to be interpreted and not in accordance with modern notions and the needs of the time. They are to be protected against subversive activities specially from outside their States. This means that they are not to be compelled in any way to introduce reforms in their States. There cannot be any better safeguard for perpetuating the mediaeval autocracy and feudalism in the States and condemning the helpless people of the States to their present miserable condition for all times to come. But the question may be asked, "Can the political clock be stopped from working in the States for all times?" Can we ignore the lessons of history? Will Sir Sikandar succeed where Metternich failed?

Bait to the
Indian
Princes

**Appointment
of the
representa-
tives of the
Indian
States**

The States are assured of the representation allotted to them in the official scheme. The right of the Indian Princes to nominate their representatives to the Federal Legislature is virtually preserved. A long range scheme is proposed according to which, during the first ten years, only one-fourth of the representation allotted to a State is to be *selected* by the Ruler out of a panel to be elected by the State Assembly ; during the next five years, only one-third is to be elected in the same way ; during the next five years, only one-half is to be elected ; and after that two-thirds are to be elected. Thus for twenty years, the States' representation is to be dominated by the whims of the Princes. Even after twenty years, one-third of the representation shall continue to be nominated by the Princes. Meanwhile the kind of election that is proposed to be introduced also leaves some scope for the exercise of princely discretion. Thus is democracy throttled in the States for all times. There is to be no full recognition of the rights of the subjects of the Indian Princes, whose autocracy can continue without a check. This is not all. It is further provided that the Federal Cabinet must contain two representatives of the Indian States, if its strength is nine. If it is more than nine, the number of the representatives of the States should be increased to three. This is a new and perhaps impracticable provision because it is not possible to foresee what party alignments will take place in the Federal Legislature. Even if it be practicable to have such a Cabinet, this perpetual injunction is bound to strengthen the forces of reaction, at the Centre.

**Representa-
tives of the
States in the
Federal
Executive**

**The Federal
Centre**

Weak

The Federal Centre is deliberately made weak and impotent in relation to the constituent units of the Federation. This is done by cutting down the number of Federal subjects, practically transferring the Concurrent subjects to the control of the Regional Legislatures, and vesting the Residuary powers in the units. This has been done ostensibly to safeguard the autonomy of the units, but the real reason seems to be the Muslim fear of Hindu majority at the Centre. Whatever may be the reason, a weak Centre cannot fulfil the needs of India. It will be helpless to check the fissiparous tendencies which are already raising their ugly head and are retarding

the realization of the ideal of national unity. The Federal Legislature, that is proposed to be set up, will be unicameral instead of bicameral as provided in the Act. This has been done because there would be no necessity for the second House in view of the serious curtailment of powers of the Federal Legislature and the setting up of the Regional Legislatures. The House will have the total membership of 375, out of which only 105 will be Hindu seats and 207 will be combined Muslim and States' seats. Sir Sikandar is also willing to provide for representation to those interests, which will go unrepresented by the abolition of the Upper House, by increasing the membership of the Assembly thus making it all the more conservative. The Federal Legislature is also given certain powers to legislate with regard to Regional and Provincial subjects, but the attached safeguards make this power almost useless. The proposed Federal Executive is a strange medley of responsibility and irresponsibility and parliamentary and non-parliamentary systems. The dyarchy is kept in tact, thus not assuring complete transfer of responsibility to the Legislature. Presumably the Reserved and Special Powers of the Governor-General are to continue. Anyhow it is explicitly provided that the Governor-General will continue to nominate the Ministers for Defence and External Affairs. Even the Advisory Committees, which are proposed to be set up for the purpose, are packed with official majorities and can never be the true representatives of nationalist opinion in the country. Such measures are calculated to perpetuate British imperialism in the country and perhaps are meant to make the scheme acceptable to the British Government. Further the composition of the Federal Cabinet must follow certain well-defined rules. Every Zone must have at least one Minister. This Minister will be responsible as a member of the Cabinet to the whole House and also to the representatives of his Regional Legislature. He must resign if he loses the confidence of the latter. Thus he shall have two masters, who in practice will be very difficult to please at the same time. Coming to the composition of the Cabinet, it is provided that at least one-third of the Ministers must be Muslims, and at least two or three, according to whether the total strength of the Cabinet is less or

The Federal
Legislature

The Federal
Executive

Composition.

more than nine, should belong to the Indian States. It means that

" If the Cabinet is to consist of 7 ministers, 3 of them must be Muslims and 2 representative of the Princes, leaving the Hindu community to be represented by the remaining 2. If the number is 9, as provisionally fixed by Sir Sikandar, the number of Muslim ministers will be 3 and that of the Princes representatives will be 2. Lastly if the number is to be 11, the number of Muslim ministers is to be 4 and that of the Princes representatives 3, thus totalling 7 in a Cabinet of 11. In all cases and under all circumstances, therefore, the Muslims and the Princes together are to have a clear and decided majority in the Cabinet as against the representatives of the majority community. This is safeguarding the interests of the minorities and the Princes with a vengeance ” ”

It may be noted here that it is permissible under the scheme to select Ministers, who can be counted at the same time in the minimum quotas assigned to the Muslims and the States; but this will perhaps be violating the spirit of the scheme. There is another danger. Suppose the Prime Minister happens to be a Hindu. In order to have a maximum number of Hindu Ministers in a Cabinet of nine, he sees that the two Ministers, who are selected from the States, are Muslims. He selects another Muslim Minister to represent British India. The remaining six Ministers will then be Hindus. Will this be liked by the Muslims of British India? Will it be fair to them and the States? Moreover, under such an arrangement the Hindu States will go unrepresented and British Indian Muslims will have only one minister to represent them. Is it equitable? But perhaps the author of the scheme thinks that an alliance between the Princes' representatives and the Muslim representative, will command a majority in the House which may make a Muslim Prime Minister possible. In doing this, he is clearly ignoring the possibility that under the prevalent communal conditions some of the Hindu States may consider it safer to have an alliance with a Hindu party in the House than to join the Muslim party. In that case the above-mentioned contingency can arise. But apart from these communal considerations, it is not difficult to see that, with the given conditions and restrictions, it will be well-nigh impossible for any party leader to form a Party Cabinet, and if somehow he succeeds in forming it, he cannot carry on for a long time.

Then comes the division of India into Zones or Regions. Regarding it Sir Sikandar himself claimed:

Advantages to the States and the Muslims

Demerits of the proposal

Party Government cannot function

"There were several such schemes based on communal considerations, but my scheme is based on economic and administrative interests as well as affinity of languages and geographical considerations. These considerations would bring the various federating units together and federation based on zonal basis would command co-operation and *esprit de corps* among the units."

* Others, however, do not accept this claim. For instance, Sir Jogendra Singh state in a statement on July 9th 1939—

"He (Sir Sikandar) does not say so, but it is evident that under the cover of demarcating provincial boundaries, he wishes to carry out redistribution of population and divide India into Muslim and Hindu India."

Taking up the actual Zonal division, it is found that it is neither non-communal nor scientific. In the first Zone, he wants to transfer a few predominantly Hindu Districts in Western Bengal to Orissa so as to reduce the Hindu majority. In the Regional Legislature of this Zone, the Muslims, the States, the Europeans, and the Anglo-Indians can easily command between them 26 seats in a House of 50. To the second Zone, he adds the States of Bikaner and Jaisalmer for some unknown reason. In the Regional Legislature in this Zone, the above-mentioned combination will command 43 seats in a House of 61. Moreover the effect of the advantage to the Congress of its rule over the North-West Frontier Province will be easily offset. To the third Zone of Bombay and Hyderabad are added the States in Central Provinces, which do not possess geographical contiguity with other units in this Zone. In the Regional Legislature of this Zone, the Muslims-cum-Europeans-cum-Anglo-Indians-cum-States combination will command 53 seats out of a total strength of 76. In the fourth Zone are included the Bihar States which lack geographical contiguity with other units in the Zone. In the Regional Legislature of this Zone, the abovementioned combination will command 40 seats out of the total strength of 56. In the remaining three Zones, the Hindus are likely to command a majority. Thus it is clear that the Zonal division is calculated to keep the Hindus in a perpetual minority in at least four Zones. It is clear that Sir Sikandar

Zonal division of India

Advantage

Disadvantage

Neither non communal nor scientific

Hindus in a perpetual minority in the four Zones

is trying to perpetuate permanent communal majorities and minorities which will foster communalism rather than destroy it.

The Regional Legislatures Superfluous

Moreover the establishment of the Regional Legislatures is nothing better than introducing a wheel within wheels. Perhaps they represent the superfluous fifth wheel. They are intended to serve as clogs in the way of the functioning of the organs of the Federal Government. The conditions, which are put on their working, will not allow them to achieve anything useful. Particularly the law of three-fourths majority will stand in the way of its accomplishing anything. Further it is not clear how these Legislatures will function without executives.

The composition of the Army

Lastly Sir Sikandar proposes to maintain the present day strength of the Punjab, the Indian army, which incidentally means a predominant position for the Muslims. We have already referred to* the economic aspect of the question as far as the Punjabis are concerned. But by insisting on this advantage, the Punjab is accepting a tremendous responsibility for the defence of India, as about 75% of the army at present belongs to the Punjab. In the days to come, the Punjab may not be able to discharge this responsibility properly because on account of the development of aerial and naval warfare, other parts of India have also become vulnerable from the enemy point of view. From the national point of view, it is absolutely essential that the people of other Provinces must get military training and must be made to bear responsibility for the defence of at least their parts of the country.

Summary

To sum up, it may be stated that Sir Sikandar's scheme visualizes an alliance between the reactionary forces in the country, and thus makes the Constitution ultra conservative and thoroughly reactionary. It is likely to perpetuate communalism. It does not promise *Swaraj* to the country. It perpetuates almost all the defects of the official scheme. Dyarchy at the Centre is preserved. Responsibility is incomplete and halting. Indirect election to the Federal Legislature is not abolished. Objectionable economic and financial provisions are

to be kept intact. Moreover it introduces new objectionable features in the establishment of the Zonal divisions, the Regional Legislatures, the composition of the Federal Legislature and the Federal Executive and the powers given to them. All these defects make Sir Sikandar's scheme constitutionally unsound and administratively unworkable. Sir Sikandar declared that his scheme could be adopted without disturbing the official scheme. It is clear that it is not possible because the Act provides for a bicameral Legislature and not for the proposed unicameral Legislature. The allotment of one-third representation of the whole House to the Muslims involves a change in the terms of the Communal Award, which cannot be done without mutual agreement. Lastly the establishment of Regional Legislatures is not provided for in the scheme of the Act.

The merit of the scheme is that it proposes to preserve the unity of India by the establishment of a Federation of India. But the actual scheme is rather defective and with a weak Centre establishes a Confederation rather than a Federation. According to Sir Jogendra Singh,*

"Sir Sikandar Hayat Khan's speech on Federation gives an impression as if he was defining night by darkness and death by dust. He admits that Federation is essential for India, but this admission is like keeping the word of promise to the ear and breaking it to the heart."

Another good point is that Sir Sikandar wants the immediate grant of Dominion Status. This is certainly a wise suggestion, and is bound to be approved by the vast majority of the Indians. But even here, by Dominion Status Sir Sikandar seems to understand merely an independent autonomous status in the Commonwealth and not the establishment of democratic self-government in the country. Objection is bound to be taken to this. It may, however, be noted that if the communal problem in the country is to be solved, the distrust of the Minorities shall have to be removed by conceding some of the safeguards mentioned by Sir Sikandar. At least his suggestion of dividing India into Zones or Provincial Blocks with evenly balanced communal strengths is worth considering. This will certainly reduce Hindu majorities, but the Hindus who claim to be nation-

Involves changes in the Act.

The Merits of the Scheme

Unity of India

Grant of Dominion Status

The merit of the division into Zones

* Statement, issued from Simla, July 9, 1939.

alists while calling the Muslims communalists, should not be afraid of an arrangement under which the communal proportions are evenly balanced, if this banishes communalism from the country. If that desirable consummation takes place, the question of Hindu and Muslim will go and the Government will be national. All well-wishers of the country, however, must see that under this device the forces of reaction and communalism are not firmly put in the saddle.

The Unity of India

The Merits of the Official Scheme.—As compared with these schemes, the official scheme has decidedly certain merits. It assures the fundamental unity of India. His Excellency the Viceroy stated in a speech at Calcutta on December 19, 1934, as under:—

Political Unity

"In framing the Federal Scheme, we had in view in the first place as a consideration of dominant importance, the unity of India. The decisive weight of that factor calls for no argument to-day. Nor do I see any scheme that holds out a greater hope for the achievement of the political and constitutional unity of this great country than the scheme of the Act."

Instead of helping the growth of two or even more nations in India, it is devised with the idea of bringing the different communities together under one political system. In a striking contrast to the zonal schemes, it preserves the geographical unity of India. It also safeguards the economic unity of India. Again in the words of His Excellency the Viceroy.

Economic Unity

"But the achievement of that scheme cannot, in my judgment, but tend to harmonise the interests of all parties without material injury to any; to weld together from the economic and fiscal point of view, in a manner and to an extent which could not otherwise be looked for, the Indian States and British India; and to ensure the alleviation of that lack of unity which, whatever its historical explanation, cannot in this sphere but strike the observer as calculated to reduce efficiency, and to hamper the development of India's natural resources, and of her commercial and industrial opportunities."

Advance towards Dominion Status

Although no mention of Dominion Status is made in the Act, yet it may be hoped that the success of the scheme is likely to advance India nearer to her constitutional goal. There cannot be two opinions on the point that if India is to advance a further stage towards full responsible self-government, Federation must come. Coming to the internal structure of the scheme, the successful working of Provincial Autonomy encourages the belief that the Federal scheme is constitutionally sound. With certain changes or certain understandings and conventions, the scheme can be made to work. It is the result of the balancing of the forces of advance and conservatism, and under certain favourable conditions

Constitutionally Sound

Balance of forces of conservatism and advance

can be utilized for the good of the country. By introducing Central Responsibility, however inadequate it may be, it marks an advance on the present conditions, under which an out and out irresponsible executive functions. It is more likely to encourage the growth of a sound system of parliamentary government than the other schemes in the field, because it does not contain some of the impossible conditions regarding the composition and functioning of the Federal Cabinet included in the other schemes. Under this scheme, the Central Government will be fairly strong so as to check the growth of fissiparous tendencies and to preserve the unity of government for the whole country. The provisions regarding the administrative relations between the Centre and component units, the Federal Court, the High Courts, and the Public Service Commissions are sound. Lastly the scheme is not a one-sided thing. It is the result of the labours of politicians belonging to all communities and schools of thought. The very fact that it is being criticised by almost all interests proves that it does not assure the domination of any one particular interest.

Demand for Amendments.—This, however, does not make the scheme acceptable to the nation. The defects of the scheme are so serious and glaring that no political party can think of accepting the responsibility for working it. It will be very difficult for any party to give a practical shape to its programme and catch the imagination of the masses. It is for this reason that an amendment of the scheme is asked for. The Amending Bill can *inter alia* provide for a declaration in the Preamble granting Dominion Status to India, abolition of dyarchy at the Centre, or devising an arrangement by which the administration of Defence and Foreign Affairs is made largely subject to the will of the Legislature, the abolition of the Ecclesiastical Department, the appointment of the Counsellors, the Financial Adviser, and the members of the Railway Authority on the advice of the Federal Cabinet, associating Indians with the administration of the Department of Defence, formulating a scheme for the Indianization of the Indian army in a short period, the grant of the same rights in respect of External Affairs as are enjoyed by the Dominions, substitution of direct election for the Lower House, taking away the powers of purse from the Upper House, abolition of

Central
Responsibil-
ity

Strong
Central
Government

Some Sound
Provisions

Does not
assure the
domina-
tion of
any one
particulaar
interest

Need for
amendment

Where
amendment
is necessary

Refusal to form the Ministry

The Crisis

Results

Alliance between the Congress and the Muslim League

Conclusion

Way out of the dilemma

appointment of an *interim* minority Government. Meanwhile the Congress can take recourse to direct action. The Congress Provincial Governments refuse to co-operate with the Federal Government in suppressing the movement in the Provinces. They are asked to quit by the Governors under instructions from the Governor-General. Their places are occupied by minority Governments with reactionary outlook. The movement of direct action is intensified in the country. The British imperialism utilizes the Indian Governments, both at the Centre and the Provinces, to suppress the movement. This further divides the nation, causes mutual bitterness, and excites communal passions leading to communal strife. The interests of the nation suffer, and yet the Congress may not gain the point. It may be argued that if the Congress and the Muslim League, which is also opposed to the Federation, arrive at some understanding and start direct action against the establishment of the Federation, they are bound to carry the day. If this happens, there will be no need of direct action because the British Government may be credited with enough good sense not to court sure failure by imposing the unwanted Constitution in face of the united opposition of the Congress and the Muslim League. Thus it may be concluded that although considerable political pressure can be applied by direct action, yet in the state of present day party politics it is very difficult for the Congress to wreck the Federal scheme. Moreover the adoption of this course will encourage fissiparous tendencies, which are likely to undo the work of the Congress for national solidarity.

Need for Constitutional Conventions.—If the Congress cannot succeed in wrecking the Constitution should it accept and work it? This is clearly not possible in view of the clear position of rejection of the Federal scheme taken by the Congress. Moreover on account of the inadequacy of political power that the scheme will place in the hands of the popular Ministers, the Congress Ministers will not be able to fulfil the hopes and ambitions of the Indian masses. This will result in the Congress party losing its hold on the Indian masses. The only way out of the dilemma is to agree to work the Federation after amendments, if possible, and if that be n

possible, after some mutually agreed constitutional conventions and understandings. These conventions can be so framed that they shall have the effect of transferring the substance of power to the hands of the responsible Ministers and of removing some obnoxious features. If an understanding can work well in the Provinces, there is no reason why it should not work at the Centre.

Some sort of understanding on the lines of the Provinces can be arrived at with the Governor-General in respect of the exercise of his Special Powers and Responsibilities. There should not be any objection to his accepting the advice of his Ministers in respect of his Special Responsibilities, if that advice is within the four corners of the Constitution. This can, of course, be made ultimate, by subject to his power of disagreement and dismissal. In respect of External Affairs, it may be understood that subject to imperial considerations, the views of the responsible Ministers will generally prevail. In matter of Defence, the Ministry can also be consulted. A part of the "expenditure on Defence" can be made subject to the vote of the Federal Legislature. Moreover the Reserved and the Transferred spheres of Government should function as one unit. The Counsellors of the Governor-General can be technically appointed by him on the advice of the Ministry. No provision of the Act is contravened, if these Counsellors come in and go out of office with the Ministry on whose advice they are appointed. The Financial Adviser, the Advocate-General, and the members of the Railway Authority can also be appointed on the advice of the Ministry. An assurance can be given that the commercial and other safeguards will not be used against the clear interests of India. The Indian Princes can be prevailed upon to allow at least a part of their representatives to be elected by their subjects. These understandings can make the Act workable and acceptable. There is nothing in the Act that seems to stand in the way of these understandings. In the interests of the Empire and India, a Gentleman's Agreement on these lines should be arranged between the British Government and the leaders of the Indian people.

Constitutional Conventions

Where they are possible

Special Powers of the Governor-General

Reserved Departments

Appointments on the advice of the Ministry

Commercial Safeguards

Election of the States' representatives

A Gentleman's Agreement

The Opposition of the Muslim League.—Besides the Congress, the other parties, which are opposed to the

Refusal to form the Ministry

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Need for Constitutional Conventions.—If the Congress cannot succeed in wrecking the Constitution should it accept and work it? This is clearly not possible in view of the clear position of rejection of the Federal scheme taken by the Congress. Moreover on account of the inadequacy of political power that the scheme will place in the hands of the popular Ministers, the Congress Ministers will not be able to fulfil the hopes and ambitions of the Indian masses. This will result in the Congress party losing its hold on the Indian masses. The only way out of the dilemma is to agree to work the Federation after amendments, if possible, and if that be not

possible, after some mutually agreed constitutional conventions and understandings. These conventions can be so framed that they shall have the effect of transferring the substance of power to the hands of the responsible Ministers and of removing some obnoxious features. If an understanding can work well in the Provinces, there is no reason why it should not work at the Centre.

Some sort of understanding on the lines of the Provinces can be arrived at with the Governor-General in respect of the exercise of his Special Powers and Responsibilities. There should not be any objection to his accepting the advice of his Ministers in respect of his Special Responsibilities, if that advice is within the four corners of the Constitution. This can, of course, be made ultimate, by subject to his power of disagreement and dismissal. In respect of External Affairs, it may be understood that subject to imperial considerations, the views of the responsible Ministers will generally prevail. In matter of Defence, the Ministry can also be consulted. A part of the "expenditure on Defence" can be made subject to the vote of the Federal Legislature. Moreover the Reserved and the Transferred spheres of Government should function as one unit. The Counsellors of the Governor-General can be technically appointed by him on the advice of the Ministry. No provision of the Act is contravened, if these Counsellors come in and go out of office with the Ministry on whose advice they are appointed. The Financial Adviser, the Advocate-General, and the members of the Railway Authority can also be appointed on the advice of the Ministry. An assurance can be given that the commercial and other safeguards will not be used against the clear interests of India. The Indian Princes can be prevailed upon to allow at least a part of their representatives to be elected by their subjects. These understandings can make the Act workable and acceptable. There is nothing in the Act that seems to stand in the way of these understandings. In the interests of the Empire and India, a Gentleman's Agreement on these lines should be arranged between the British Government and the leaders of the Indian people.

The Opposition of the Muslim League.—Besides the Congress, the other parties, which are opposed to the

Constitutional Conventions

Where they are possible

Special Powers of the Governor-General

Reserved Departments

Appointments on the advice of the Ministry

Commercial Safeguards

Election of the States' representatives

A Gentleman's Agreement

Need for
Conciliating
the Muslims

Meeting
Muslim
Demands

Position
obscure

Reasons for
their
opposition

Federal scheme, are the Muslim League and the Princes. The view point of the Muslim League has already been examined. It must suffice to say here that there is a genuine apprehension among some Muslim politicians regarding the safety of Muslim interests under the Federation. In the interest of mutual goodwill and national unity, a serious attempt should be made to remove this apprehension by having some mutual understanding. If it be necessary for the purpose, some more reasonable safeguards may be conceded to the Muslim community. The Princes of Hindu States may be prevailed upon to give an understanding that a reasonable number of Muslims will always be included in the representatives nominated by them. This will tend to increase Muslim representation in the Federal Legislature so as to make it as nearly as possible one-third of the total strength of the House. The Muslims can also be assured that a reasonable number of Muslims will always be appointed in the Federal Cabinet. A trial may also be given to Mr. Jinnah's proposal of a composite Cabinet after certain clear understandings regarding the policy and programme to be followed.

The Opposition of the Princes.—Although the suggestion for the Federation of India originally came from the Indian Princes, yet even they feel reluctant to accede to the Federation under the present scheme. Only recently a meeting of the Chamber of Princes at Bombay declared the Instrument of Accession to be unsatisfactory. A number of conferences and mutual consultations between the Governor General and the Princes do not seem to have satisfied the latter. The position regarding their entry, therefore, remains obscure though it is hoped that the requisite number out of them will be coming forward to join the Federation. The reluctance of the Princes to join the Federation is due to their disappointment with the official scheme. They had hoped to limit paramountcy by this means, at the same time preserving the notions of their own sovereignty. This they have failed to secure. Moreover they feel that they will be in a permanent minority in the Federal Legislature and that an individual State in it will merely be an insignificant drop in the ocean. They will not be in a position to have an effective voice in the formation and composition of the Federal Executive. Moreover they cannot get any protection

from the Federal Court against the pressure of Paramountcy. This criticism obviously assumes that the States and the British Indian Provinces will always range themselves in separate and exclusive blocs, which is not likely to be the case. It is hoped that the party lines will cut across these distinctions so as to have parties, with mixed membership, and with programmes that will take note of needs and desires of different interests.

But there is no denying the fact that the Princes really feel that their rights and interests—personal, dynastic, and of the States, are not adequately safeguarded. They, therefore, demand changes in the Instrument of Accession, embodying safeguards guaranteeing their financial, economic, and political interests. It is believed that they also demand a creation of a special police force by the Crown Representative, which should be used to protect them against subversive movements from British India, when the neighbouring Provincial Government may refuse to intervene. In the absence of full information, it is not possible to make concrete suggestions. But the States should realize that the whole Federal scheme has been devised to safeguard their interests and is advantageous to them. If they remove the distrust of the British Indian politicians, they will find that they do not lose anything by entering the Federation. If, however, they miss the occasion now, nobody can foresee what kind of situation might develop in the future. The rapidly increasing strength of the democratic movements both inside and outside their States certainly point out ominous forebodings for their point of view. In future even the Paramount Power may not be able to help them against their own subjects, and with the active sympathy of the popular governments in British India, the popular movements may prove too strong for the resources of the States. In that case their interests are bound to suffer more than by joining the Federation at this time. Now British India wants them because without them the dream of a united India cannot be realized. In the words of Sir Jogendra Singh.*

"India can only become an organic whole if the provinces and the States federate and create a living, thinking percipient

New
Demands

Warning to
the States

Why British
India desires
their entry

* Letter to the *Manchester Guardian*.

entity capable of formulating and carrying out a purposeful policy. It is only then that India could take her proper place among the nations of the world."

Thus the Princes will do well in giving a favourable response by joining the Federation of India.

Need for Immediate Action.—In view of the dangers present in the body politic of India, the Federation of India must be established immediately. With an irresponsible Centre controlling responsible Provinces, India is now in an impossible condition. It is clear that the structure is incomplete, and until it is completed immediately by substituting an elected responsible government at the Centre, there is a real danger to the whole structure. The cracks have already begun to appear and there is a real danger of collapse under pressure. This must be avoided if the country is to be saved. The delay between the inauguration of the Provincial Autonomy and the establishment of the Federation has already let loose forces of separatism, provincialism, and antagonism between the States and the British Indian Provinces. The ideal of national unity is being driven to the background and ideas of division are coming to the fore. The various schemes for the division of India into communal Zones are indications of this tendency. If these dangerous forces are to be suppressed and the ever widening gulf that divides a community from a community and a unit from a unit is to be bridged, Federation must be established immediately. Even from the economic point of view, there is an imperative need for the Federation of India as no complete scheme of national planning can be formulated without it. Moreover the problem of Indian defence cannot be properly solved without an all-India responsible government.

Irresponsible
Centre and
Responsible
Provinces

Fissiparous
tendencies

Economic
necessity

Defence

The shadow
of War

The Present Position.—It must be said to the credit of His Excellency the Viceroy that he was doing everything possible to expedite the establishment of the Federation of India in the shortest possible time. Federation was a very live issue of Indian politics ; but the War has now come. The British Commonwealth of Nations has declared war against Nazi Germany in defence of a weak nation, viz., Poland, which has become a victim of unprovoked aggression. This overshadows everything and so the issue of Federation has been pushed into the background. India has to play her part in this War.

She won the Montford Reforms on the battlefields of France and Western Asia ; she has now been afforded another opportunity to do the same. It is to be hoped that she will not lose it and will show to the world and the British people that she can be trusted to play her part bravely and nobly.

Various proposals have been put forward for carrying on the machine of the Central Government during the period of the War. It has been suggested that a sort of provisional Federation should at once be set up to carry on the administration during the period of emergency. As this Federal Government will be enjoying the confidence of the people, it will be able to get the utmost out of them for the prosecution of the War. Meanwhile Mahatma Gandhi has pleaded for the establishment of a voluntary Federation.

So far no decision has been taken on this point. Meanwhile the Central Government has adopted energetic measures to meet the emergency. A number of Ordinances, including the Defence of India Ordinance, has been issued to meet the situation.

Suspension of the Work regarding Federation.—The War has necessarily put everything in the back-ground. Nobody can deny the urgency of attending to the situation created by the War with single-minded purpose. His Excellency the Viceroy, therefore, announced the suspension of the work in connection with the preparations for Federation in a speech before the Central Legislature on 11th September, 1939. His Excellency observed—

"I will add only one word more in regard to our Federal preparations. Those preparations, as you are aware, are well advanced, and great labour has been lavished on them in the last three years. Federation remains as before the objective of His Majesty's Government ; but you will understand, gentlemen, without any elaborate exposition on my part, the compulsion of the present international situation, and the fact that given the necessity for concentrating on the emergency that confronts us, we have no choice but to hold in suspense the work in connection with preparations for Federation, while retaining Federation as our objective."

It has been suggested that besides the demands of the War situation, the suspension of the work regarding Federation is due to the suggestion of some eminent political leaders. Whether this suggestion is based on fact or not, it is clear that at this time " it is

India's duty

Provisional Federation

A Voluntary Federation

Ordinances

The "Compulsion" of the War situation

His Excellency's Remarks

Effects of
the
suspension

obviously impossible to press on with the final and most controversial stages of Federation during the present crisis."* This step is calculated to subside for the time being the political passions that had arisen on account of the doubts entertained about the utility of the Federal scheme from the national and the communal points of view. It also allays the fears of the Princes over Federation. Thus the Princes and the people of India can now rally round the British Government in face of the common peril.

No Perma-
nent
solution

This, however, is no permanent solution of the Indian problem. With responsible Provinces and irresponsible Centre, India is in an impossible condition. There are clear signs of discontent and dissatisfaction with the present state of affairs. The suspension of the work regarding the Federation leaves the political structure incomplete and creates a political vacuum. This vacuum must be filled. The idea of Federation, the only practicable road to Indian union and Indian nationhood, has, therefore, not been abandoned. Even the scheme adumbrated in the Government of India Act, 1935, still holds the field. But this cannot satisfy India. She wants a Federal scheme of her own making and after her own heart. This suspension can only be of use to her, if that desire is fulfilled. According to the *Tribune*,† Lahore, the "compulsion" of the international situation—

India's
desire and
hope

"has for the moment, at any rate, enabled the British Government to steer clear at once of Scylla of imposing an unwanted scheme on India and of the Charybids of abandoning altogether a scheme on which their heart was set. More than that. It has given them a breathing space, which if they are wise they can utilize for the purpose of arriving at an understanding with political India and devising a new scheme based on that understanding."

It remains to be seen whether this will be done. Meanwhile political India will remain in a state of animated suspense.

* *London Times*, September 12, 1939.

† Dated, 18th September, 1939.

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